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OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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PETITION OF GILMOURE-BRUNETT, LLC : Case No. S-2781
SPECIAL EXCEPTION REQUEST : OZAH NO. 11-05
:
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A hearing in the above-entitled matter was held on
December 9, 2011, commencing at 1:30 P.m., at the Office of
Zoning and Administrative Hearings, 100 Maryland Avenue,
Room 200, Rockville, Maryland 20850 before:

Lynn A. Robeson, Hearing Examiner

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A P P E A R A N C E S

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ON BEHALF OF THE OPPOSITION:

James Zepp	38
10602 Lockridge Drive	
Silver Spring, Maryland 20901	
Mike Pfetsch	71
9906 Indian Lane	
Silver Spring, Maryland 20901	
Harriet Quinn	80
10419 Brookmoor Drive	
Silver Spring, Maryland 20901	

P R O C E E D I N G S

EXAMINER: We're on the record today. This is a continuation of the public hearing in the matter of Petition of Gilmoure-Brunett, LLC, BOA case S-2781, OZAH case 11-05, an application for a special exception to permit a child daycare facility at 220 West University Boulevard, Silver Spring, Maryland, on land in the R-60 zone.

The current application is for a 4400 square foot building with 76 students and 15 employees. I have just received an exhibit. I don't know if the parties had gotten it. It's a letter from Ms. Karen Michels, and it's been marked as Exhibit 148, and I have two copies here in the event you --

MR. SEKERAK: She brought it.

EXAMINER: She did bring it for you?

MR. STARKEY: Yes. Thank you.

EXAMINER: Okay. Are there any other -- as I recall, we left off with Mr. Leibowitz's -- well, first let me have you identify yourselves for the record, please.

MR. LEIBOWITZ: Good afternoon. Louis Leibowitz on behalf of South Four Corners.

MS. MEAD:: Good afternoon. Anne Mead on behalf of Gilmoure-Brunett, LLC.

EXAMINER: Okay. I think we left off with you. We were in your case, and you had two more witnesses that

1 you thought wanted to testify or --

2 MR. LEIBOWITZ: We had called all the witnesses
3 that we -- that are a part of our neighborhood, our specific
4 association. But, there were two more. There was the
5 witness we had also listed but who was from the Northwood-
6 Four Corners Civic Association, James Zepp, and then also
7 Harriet Quinn who we had also listed but who is separately
8 part of the Woodmoor Civic Association, and I think they're
9 going to testify as their own witness and then -- rather
10 than in the South Four Corners.

11 EXAMINER: Rather than be called as part of your
12 case.

13 MR. LEIBOWITZ: Correct.

14 EXAMINER: Okay. I understand. Are there any
15 other preliminary matters before we get -- I did also send
16 the applicants attorney, and I cc'd Mr. Leibowitz a series
17 of questions that I had after reviewing the transcript from
18 the prior hearing and both of you received that email?

19 MR. LEIBOWITZ: Yes.

20 MS. MEAD: Yes.

21 EXAMINER: Okay. Any other preliminary matters?

22 MR. LEIBOWITZ: Again, in regard to that email,
23 would you anticipate that there'd be testimony about that
24 following the rest of the witnesses, if any?

25 EXAMINER: Well, what I'm going to do is this

1 because it's not technically rebuttal. Those were just --
2 it should have been part of the case in chief or my
3 questions really related to the case in chief. I'm going to
4 let you have the ability to cross-examine on them and
5 present additional evidence on them if you need to.

6 MR. LEIBOWITZ: Okay.

7 EXAMINER: All right?

8 MS. MEAD: Judge, for clarification, I was just
9 going to respond to the questions. We weren't going to
10 recall any witnesses for those questions. So, hopefully,
11 that will address the answers.

12 EXAMINER: Okay. Well, they still would get a
13 chance --

14 MS. MEAD: Okay. Sure.

15 EXAMINER: -- though, to put on their own evidence
16 if they don't like their answers.

17 MS. MEAD: Okay.

18 EXAMINER: Okay. Bluntly put. So, we can start
19 then with either Mr. Zepp or Ms. Quinn unless there's any
20 other preliminary matter that you had.

21 MR. LEIBOWITZ: No. I had anticipated that there
22 would be additional testimony with regard to the questions
23 that you had posed in the email.

24 EXAMINER: So, you're asking her to do that first
25 and then let --

1 MR. LEIBOWITZ: Whether it's first or some other
2 time, my concern is that I won't be able to -- I can't
3 cross-examine Counsel about those --

4 EXAMINER: Well, I assumed there would be
5 testimony. It's just a matter -- do you have testimony?

6 MS. MEAD: No. It's just responding to the
7 questions that all refers to items that are in the record as
8 far as what we can reference them to since they haven't
9 changed from the --

10 EXAMINER: Well, some of them, I guess -- what
11 about the staff members? I mean, do you have a witness that
12 can testify why there's three additional staff members or --

13 MS. MEAD: Our math came out differently.

14 EXAMINER: Oh.

15 MS. MEAD: I do have a breakdown from the emails.
16 I was just going to read it to you but it shouldn't be
17 different than what they testified to as far as the ratios
18 for the employees for item 3.

19 MR. LEIBOWITZ: I guess I've just --

20 EXAMINER: Well, what about the change in the
21 number of children on the playground?

22 MS. MEAD: Should we just answer -- should we go
23 through these now? That might be enlightening.

24 EXAMINER: Why don't we? Because I do believe
25 that Mr. Leibowitz is -- he needs a body here to ask

1 questions on and you aren't, you know --

2 MS. MEAD: Okay. Well, our position is that these
3 hadn't changed. These were clarification items, and they
4 haven't changed since the --

5 EXAMINER: Well, why don't you go through the
6 questions.

7 MS. MEAD: Okay.

8 MR. LEIBOWITZ: If they haven't changed, then I
9 would object to dealing with it this way and then just say,
10 you know, you have to look in the record to figure it out
11 which I don't think is a satisfactory solution. But, if
12 there isn't any new answers then --

13 EXAMINER: Well, I want the answers because I --

14 MS. MEAD: Don't exactly want to give their
15 answers.

16 EXAMINER: I mean my problem with this I didn't
17 know which of that testimony was still applicable or not.
18 That's my issue, and I don't want to report, write a report,
19 saying one thing when it's actually, you know, not the
20 correct thing to say. So, I would like an update as to
21 where you stand. Now, if you want to point in the record
22 where the references are, I think that would be helpful,
23 too, so we can decide if you need somebody to testify or,
24 you know, whether we can just use the current transcript.

25 MS. MEAD: Okay. Or the documents themselves is

1 what I was going to refer to as far as the TMP.

2 EXAMINER: Yes.

3 MS. MEAD: Should I --

4 EXAMINER: Well, you wrote the TMP. Right?

5 That's what Mr. Starkey said last time.

6 MS. MEAD: Right. We, I mean, obviously with the
7 applicant, and the child labor representatives as far as the
8 statement of operations and the TMP.

9 EXAMINER: So, they participated in the drafting
10 of the TMP?

11 MS. MEAD: Right.

12 EXAMINER: Okay. Why don't you go through the
13 questions?

14 MS. MEAD: Okay. One, are the special events
15 still staggered by age group? Yes.

16 EXAMINER: So, what you're saying is as far as
17 special events, it's going to be exactly as described
18 before?

19 MS. MEAD: Correct.

20 EXAMINER: Okay.

21 MS. MEAD: Special events. Right. They won't
22 have any overlap. They'll just be by age group.

23 EXAMINER: No. I'm saying exactly as she
24 described it before. It's going to be --

25 MS. MEAD: Right. Other than the TMP, there's no

1 evenings or weekends to answer that question.

2 EXAMINER: Okay.

3 MS. MEAD: And it says that they're only during
4 the hours of operation.

5 EXAMINER: Okay.

6 MS. MEAD: Two, the question as I note that was a
7 current amended enrollment. There's a possibility that a
8 special event would generate 20 vehicle trips which would
9 exceed the 13 spaces allocated for parents in the revised
10 plan. Our testimony is noted that it's a code requirement
11 for one space per staff member. Our testimony has indicated
12 that we don't anticipate using one parking space for each
13 staff member. That's merely the code requirements that they
14 will be allocated 13 spaces on the parking lot, won't be
15 allocated just for staff parking, that there will be 20
16 spots available for special events.

17 EXAMINER: Well, what happens if you're wrong? I
18 guess that's what I'm saying. So, you're saying you're
19 never going to have 15 staff people there. Never.

20 MS. MEAD: Parking there?

21 EXAMINER: Yes.

22 MS. MEAD: No that's up to the -- as noted in the
23 TMP, if there's a special event and they feel that they may
24 be constrained by parking, they would have to make other
25 parking arrangements off site.

1 EXAMINER: And what would those be?

2 MS. MEAD: It'd be up to them, and they could
3 report on it in their annual reports and their community
4 meetings but they couldn't -- to have all the staff park at
5 Burtonsville.

6 EXAMINER: So, you don't have a backup plan except
7 to say you will have backup plan.

8 MS. MEAD: Correct. And that's the standard TMP
9 language as far as if there's a special event, if they would
10 plan something that would exceed the parking that they have.
11 But, as we noted in question 1 that they're only going to
12 have special events for each age group.

13 EXAMINER: Yeah. But each age group is going to
14 be 20 in some cases.

15 MS. MEAD: Right.

16 EXAMINER: Twenty if no grandparents come with a
17 separate car.

18 MS. MEAD: Correct.

19 EXAMINER: So, okay. So, you're just saying trust
20 me. We'll figure it out.

21 MS. MEAD: I'm saying that the evidence in the
22 records indicates that both they don't anticipate that all
23 of their employees will be driving a single occupant car to
24 this site and parking there. Plus, they have control over
25 their staff parking on the site, and it would be up to them

1 as far as making arrangements.

2 EXAMINER: So, they would say to the staff, find
3 another way to get here today --

4 MS. MEAD: Correct. They --

5 EXAMINER: -- besides a car?

6 MS. MEAD: As Ms. Nemont testified, they have a
7 van that they use for the Burtonsville site as far as
8 picking up their employees from a commuter lot.

9 EXAMINER: Well, she -- okay. Okay. She said
10 that -- okay.

11 MS. MEAD: Uh-huh.

12 EXAMINER: Okay. Did that refer to -- I didn't
13 think that referred to the backup plan for the
14 transportation management plan. I thought her testimony
15 said that that's how she operated the Burtonsville facility.

16 MS. MEAD: Correct.

17 EXAMINER: So, I guess my question is -- one of
18 the things, having read through the Four Corners plan which
19 is Exhibit 51 --

20 MS. MEAD: Uh-huh.

21 EXAMINER: -- is that they want to preserve the
22 residential character of the streets without having overflow
23 traffic parking. That's one thing, and cut through traffic.
24 So, I guess what I'm really asking you is, you know, what's
25 your plan aside from just saying we don't think it's going

1 to happen.

2 MS. MEAD: Well, they have a TMP that it can
3 happen. They can't have their staff parking on the street.
4 They can't have their parents parking on the street.

5 EXAMINER: And what happens if they violate the
6 TMP?

7 MS. MEAD: The violation of the TMP and their
8 conditions of special exception.

9 EXAMINER: So then you can revoke the special
10 exception?

11 MS. MEAD: Yes.

12 EXAMINER: And that's their plan?

13 MS. MEAD: I mean, hopefully, that there would be
14 communication with the transportation coordinator if such an
15 event occurred, and they would remedy it and talk to the
16 parents, staff person but that's what the TMP is designed to
17 do. The TMP notes that's it given out to all staff and
18 parents as far as what their rules are.

19 EXAMINER: Yeah. But, you didn't say it was going
20 to be part -- is going to be part of the contract with the
21 parents?

22 MS. MEAD: It's a document. It's --

23 EXAMINER: It says may. So, I guess I'm
24 questioning

25 MS. MEAD: Oh. We can change that to will.

1 EXAMINER: That would be good.

2 MS. MEAD: We are proficating that to will.

3 Sorry.

4 EXAMINER: So, basically, you're saying its our
5 risk that this doesn't occur or we lose the special
6 exception.

7 MS. MEAD: Right.

8 EXAMINER: And that should be a heavy enough
9 hammer.

10 MS. MEAD: Well, and I'm also referring to the
11 testimony in the record as far as there's little likelihood
12 that all their staff members will be parking on the site on
13 a regular day let alone a day that they know that there's
14 going to be a special event, and they can certainly make
15 other arrangements to be on the site. But, that's specified
16 in the record. When we were requesting a parking waiver
17 previously, noted that all the employees wouldn't be parking
18 on the site.

19 EXAMINER: I guess my problem is the record.
20 You're extrapolating what something in the record was about
21 another issue like the parking waiver, and here you're
22 saying well, you take the parking waiver -- we can do the
23 same thing we did for the parking waiver. Well, that's not
24 specific to this issue. In other words, you're taking bits
25 and pieces of the prior testimony and saying well, we said

1 that but we can now apply it to this situation. That
2 doesn't give Mr. Leibowitz a chance to cross-examine you as
3 to exactly how it would fit to this particular application.

4 MS. MEAD: Well, I would respectfully submit that
5 our testimony in the record indicated that staff would not
6 be -- every single 15 staff person, the maximum, that
7 there's going to be 15 on site at one time would not be
8 parking on the site 365 days of the -- or taking out the
9 weekends --

10 EXAMINER: Right.

11 MS. MEAD: -- the days of operation.

12 EXAMINER: So, how many --

13 MS. MEAD: So, let alone on the eight days that
14 there's a special event --

15 EXAMINER: But, I remember Ms. Nemont's testimony
16 that she couldn't really say what percentage of people would
17 or would not be parking at this facility. In other words,
18 you got a deficit of seven spaces which is roughly -- say,
19 all 20 parents decide to show up and even assume that
20 they're all going to come in one car, grandparents and the
21 father and the mother. Okay. So you got a deficit. Assume
22 they all come, and you got a deficit of seven spaces on the
23 lot because you got 13 for parent pickup and parking. So,
24 that means that half of your staff needs to not show up.

25 MS. MEAD: In a single occupant vehicle that

1 they're parking on the site?

2 EXAMINER: Exactly.

3 MS. MEAD: Correct.

4 EXAMINER: So, when I looked at the percentages
5 back of what percentage of staff, it was different at the
6 different facilities, and you need half of your staff not to
7 drive a single occupancy vehicle, and what I got out of Ms.
8 Nemont's testimony is that it wasn't 50 percent, and I don't
9 want to be hard on you but I really am concerned about
10 consistency with the master plan and the impact on the
11 neighborhood. So, I guess I'm saying -- I didn't see in any
12 of Nemont's numbers 50 percent don't show up. Maybe one of
13 them. But, I'd have to go back and look. But, I don't
14 remember anywhere in the numbers that 50 percent aren't
15 going to show up.

16 MS. MEAD: Well, and we can certainly, the TMP
17 language does note that if any event does generate more
18 attendees than the available parking on the site would
19 allow, arrangements would be made by the transportation
20 coordinator or designee. We can certainly make that more
21 specific or not allow there to be festival events unless
22 Child Play has confirmed that at least 50 percent of the
23 staff, if they have the maximum capacity at the time.

24 EXAMINER: Well, I don't know what percentage to
25 assign because you haven't given me what percentage you

1 anticipate aren't going to show up. I mean, you haven't
2 given me the percentage of spaces or even an estimate of how
3 many people are not going to be driving there. Do you see
4 what I'm saying? How many staff aren't going to be driving
5 there. I don't have that in the record. So, all I'm asking
6 you to do is tell me how you're going to accommodate this
7 scenario.

8 MS. MEAD: And it would be eight special events
9 that we can certainly proffer that --

10 EXAMINER: I mean, what is your overflow plan?
11 When your transportation coordinator is there and the
12 special event is happening and the cars pile up, what's your
13 plan?

14 MS. MEAD: Well, they will know about the special
15 events in advance. So, they can plan for their staff not to
16 be allowed to park there to accommodate --

17 EXAMINER: So, none of the staff is going to. So,
18 you have the opportunity, in advance, to have no staff come
19 there --

20 MS. MEAD: To leave ample parking. Correct.

21 EXAMINER: And so what would that -- how would the
22 staff get there, I guess, is what I'm saying then? Say that
23 occurs, how would the staff get there for the special event?

24 MS. MEAD: Either public transportation or Child
25 Play could make their own arrangements to shuttle them.

1 EXAMINER: So, that would be your proffer that
2 they would meet at the Burtonsville facility.

3 MS. MEAD: Right. Or another location. Right.

4 EXAMINER: Okay. All right.

5 MS. MEAD: So we would certainly make that
6 proffer, and we could have that. It would be as far as the
7 reports to the Board of Appeals, as far as I know we have
8 the current enrollment staff, the current staff. We could
9 also list the special events and how parking was handled and
10 how staff parking was handled.

11 EXAMINER: Okay.

12 MS. MEAD: So, they will provide a better example
13 as far as how it's actually being implemented.

14 MR. LEIBOWITZ: May I ask a follow up question to
15 that?

16 EXAMINER: Sure.

17 MR. LEIBOWITZ: Will it be in the contract of the
18 staff members that they can't park there during special
19 events? How will it be enforced with the staff? Are they
20 going to fire them if they show up in their car that day?

21 MS. MEAD: I think they can make arrangements with
22 the staff in advance as far as who's parking on site and who
23 would not be.

24 MR. LEIBOWITZ: Well, my question is, how is it
25 going to be enforced with the staff, if the staff member

1 says I'm not driving up Burtonsville? I live in, you know,
2 I live in Virginia, and I can't drive up to Burtonsville,
3 leave my car, and then take a van to Silver Spring and then
4 -- that's crazy. I'm just going to drive to work like I do
5 every day.

6 EXAMINER: Well --

7 MS. MEAD: I don't think a special exception user
8 would have an employee that would risk, put their whole
9 special exception at risk. I mean, that would be the --

10 EXAMINER: Well, but you're testifying now.

11 MS. MEAD: Okay. Well --

12 EXAMINER: See. That's what I don't want.

13 MS. MEAD: Well, that's part of the TMP
14 requirements.

15 EXAMINER: I mean, I think you're an excellent
16 attorney. I need a body here to tell me, you know, what's
17 going on. Now, I had some enforcement cases in the past
18 where we've had people put this in an employee policy manual
19 so that it is a firing offense if they don't comply.

20 MS. MEAD: We could certainly, in the provision
21 that provides for the -- right after it talks about the
22 contract being part of the contract with parents that the
23 TMP will also be a part of the employee requirements.

24 EXAMINER: Okay. So, the state of it is that you
25 would include those additional items in your --

1 MS. MEAD: TMP

2 EXAMINER: -- TMP. Any other questions, Mr.
3 Leibowitz?

4 MR. LEIBOWITZ: Did we include a parking place for
5 the traffic coordinator who's enforcing this whole thing?

6 EXAMINER: Well, we're getting to the traffic
7 coordinator because that was a big question in my mind, too.
8 Maybe we're already there. Well, we can go, okay. So,
9 we're on 3. If you don't mind, Mr. Leibowitz, I have to go
10 in order --

11 MR. LEIBOWITZ: I don't mind.

12 EXAMINER: -- or I'm going to mess it up. So --

13 MR. LEIBOWITZ: No. I'm the same way.

14 EXAMINER: Okay. Let's move to 3. So, you're
15 telling me I made a mistake in the math. No. It's okay. I
16 do not purport to --

17 MS. MEAD: Or it may not have been clear in the
18 testimony but for the -- going through the --

19 MR. LEIBOWITZ: Just so the record is clear, we
20 should be reading the questions on the -- I don't know if
21 the --

22 EXAMINER: Oh. Good point. I am referring to,
23 and I don't have the exhibit number which I should reference
24 as well.

25 MS. MEAD: 147?

1 EXAMINER: Yes. I am reading from the questions,
2 and Ms. Mead is answering the questions listed on Exhibit
3 147. We are now on question 3 about how many staff are
4 going to be on the site. Go ahead.

5 MS. MEAD: Correct. And going through the
6 statement of operations, the 12 infants proposed as far as a
7 maximum for there which would be four staff members.

8 EXAMINER: So, that's 1 to 3. Right?

9 MS. MEAD: Right. Yeah. Correct.

10 EXAMINER: Yes.

11 MS. MEAD: And then the 12 toddlers equal four
12 staff.

13 EXAMINER: Okay.

14 MS. MEAD: The 12 2-year-olds, two staff.

15 EXAMINER: So, we're up to 14. Okay. I see what
16 I did.

17 MS. MEAD: Twenty 3-year-olds is two staff.
18 Twenty 4-year-olds is two staff and then one director.

19 EXAMINER: One director?

20 MS. MEAD: Right an administrative director.

21 EXAMINER: Now, where's the director going to sit?
22 Because I thought you didn't have any administrative
23 offices.

24 MS. MEAD: They don't have an office. She would
25 just sit at the reception desk and --

1 EXAMINER: She wanders?

2 MS. MEAD: Yes. Directs.

3 EXAMINER: Now, is the director also the
4 transportation coordinator?

5 MS. MEAD: Yes.

6 EXAMINER: So, we're moving on now. So, you have
7 14 staff people that are going to actually do the childcare
8 and then we have one director who is an administrative
9 person that's going to sit in the front of the facility.
10 Okay. And is she going to be on site 7:00 a.m. to 7:00
11 p.m.? Who is going to be the transportation coordinator
12 during operating hours?

13 MS. MEAD: It would be the director, the
14 administrative person.

15 EXAMINER: Okay. And she's going to work from
16 7:00 a.m. to 7:00 p.m.?

17 MS. MEAD: No. But the transportation coordinator
18 will be there during the peak periods as identified in the
19 transportation plan.

20 EXAMINER: Okay. Can you remind me what the peak
21 periods are?

22 MS. MEAD: We had estimated that it would be based
23 on their parents. It says on page 1 between 8:00 and 9:15
24 a.m. and between 5:00 and 6:15 p.m.

25 EXAMINER: Now, I don't recall this being in

1 evidence.

2 MS. MEAD: It's in the TMP.

3 EXAMINER: It's in the TMP. Okay. 8:00 and 9:15,
4 and I'm sorry. What were the evening peak hours?

5 MS. MEAD: 5:00 and 6:15.

6 EXAMINER: And what about special events?

7 MS. MEAD: They'll only be during the operating
8 hours per the TMP.

9 EXAMINER: They'll be there the whole operating
10 hours during special events?

11 MS. MEAD: Yes. Because the special events are
12 only during the weekday hours.

13 EXAMINER: Okay. So, there'll be a transportation
14 manager there from 7:00 a.m. to 7:00 p.m. on days with
15 special events or they'll only be there on peak hours the
16 days you have special events?

17 MS. MEAD: They'll be there during the special
18 event.

19 EXAMINER: During the special event. But, in
20 addition to peak hours if they're on weekdays. So, you're
21 going to have a transportation coordinator there for both
22 peak hours and the special event. Is that what I'm hearing
23 you say?

24 MS. MEAD: Yes.

25 EXAMINER: Okay.

1 MS. MEAD: And it says on page 3 that --

2 EXAMINER: Who's going to check the kids in while
3 the transportation coordinator is out coordinating the
4 traffic?

5 MS. MEAD: The director doesn't check the kids in.

6 EXAMINER: Then who's the -- okay. You don't have
7 a sign out sheet?

8 MS. MEAD: Not one -- I'm trying to remember if
9 her testimony referred to it but they don't have one person
10 signing everyone in and out. It's self implementing as far
11 as signing in and signing out.

12 EXAMINER: Okay.

13 MS. MEAD: For each of the rooms, the staff people
14 would be --

15 EXAMINER: But, you don't know if that's in the
16 record or not?

17 MS. MEAD: We didn't mention that there would be a
18 director there signing everyone in and everyone out. Well,
19 I was mentioning the transportation coordinator. It says on
20 page 3 of the TMP that the transportation coordinator
21 coordinate and monitor parking at all special events to
22 ensure --

23 EXAMINER: Okay. And that takes care of the
24 coordinator. It's my question then is is there anyone sort
25 of running the administrative side during peak hour?

1 MS. MEAD: There's -- I guess I don't understand
2 the question as far as what the administration may be doing
3 during the --

4 EXAMINER: Okay. So, you're saying there is no
5 administrative duties during peak hour. There are no
6 administrative duties during peak hour.

7 MS. MEAD: Right. The coordinator, the director
8 could be outside the facility area, at the front door of the
9 facility if there was any administrative question that came
10 up. But, otherwise, there's no duties.

11 EXAMINER: I guess I'm confused because this is
12 unlike -- unfortunately, I've had two kids in daycare and
13 this is unlike that. So, okay.

14 MS. MEAD: Part of our rebuttal testimony
15 responding to some of the testimony and Mr. Starkey was
16 going to direct some of the drop off and pick up which may
17 address your questions.

18 EXAMINER: Well, I swear I thought that Ms. Nemont
19 said that they did sign out their kids but maybe she said it
20 was in the classroom and not in the director's office. I'd
21 have to look that up. Okay.

22 MS. MEAD: Right. We would agree that there's a
23 sign in and sign out but not necessarily that it has the
24 director there at the book the entire time.

25 EXAMINER: Okay. So, we've determined the answer

1 to 4 on Exhibit 147 is that the transportation coordinator
2 will be there during the peak periods and during the hours
3 of any special event.

4 MS. MEAD: Correct.

5 EXAMINER: Okay. Mr. Leibowitz, do you have any
6 questions on how this is going to work?

7 MR. LEIBOWITZ: Ms. Nemont never testified that
8 there would be a director on the location at all. So, this
9 is different than her testimony.

10 EXAMINER: Is there an issue getting Ms. Nemont
11 back here or --

12 MR. LEIBOWITZ: Again.

13 MS. MEAD: We can try and get her. I didn't
14 realize --

15 EXAMINER: I'll be honest. I would be more
16 comfortable with just --

17 MS. MEAD: Okay.

18 MR. LEIBOWITZ: Do you mind if I leave?

19 MS. MEAD: To call her?

20 EXAMINER: Oh. You mean today?

21 MS. MEAD: Sure. Go ahead.

22 MR. LEIBOWITZ: I'll just try to get her here --

23 MS. MEAD: Yeah.

24 EXAMINER: That's fine with me. I think I would
25 feel a little more comfortable doing that, and what about

1 question 5 because I read -- we're moving on to question 5
2 on Exhibit 147. I read the statement of operations
3 originally to only have -- no. I read her testimony. I'm
4 pretty sure it was the transcript that she would only have
5 20 to 25 kids in the playground at one time and then your
6 amended application proposes 45 and then staff reduced it to
7 40. So, I'm --

8 MS. MEAD: We can commit to the 25 children as Ms.
9 Nemont had testified. As Counsel, I would request the 40
10 children for utmost flexibility on the site and --

11 EXAMINER: Well, okay. But, you have a reduced
12 enrollment. So, why didn't you need the flexibility before
13 but you do need it now. That's what I don't understand.

14 MS. MEAD: Well, I may have asked for it before as
15 well in my closing.

16 EXAMINER: But she didn't testify to that.

17 MS. MEAD: Right. Her testimony was that they
18 could limit it to 25 children on site at one time. Which,
19 again, we are willing to commit to but as staff noted, 40
20 children as far as the noise issue and having children
21 outside at play given the location of the playground and the
22 noise of University Boulevard, we believe 40 would be
23 accurate.

24 EXAMINER: But, I don't have that in the record.
25 See, that's what I don't have that the noise is going to be

1 attenuated. I don't -- are you saying that the new location
2 of the playground attenuates the noise better than the old
3 location did, and that's why you can have more kids out
4 there?

5 MS. MEAD: No. I was just saying that for
6 flexibility, we had put in the 45 and as staff reduced it to
7 40 and we would request that the 40 -- we can commit to the
8 25 if the hearings examiner feels that it's critical for the
9 noise issue.

10 EXAMINER: Okay. This is my feeling. I need to
11 know where you're coming from because I don't understand if
12 she comes in and your witness says one thing and the next
13 iteration, I get something more intense, and I have no
14 testimony supporting that. Why is it up to me to pick
15 through the record and figure out exactly what you're
16 proposing? That's my view.

17 MS. MEAD: Oh. I'm sorry. That was my mistake as
18 far as the number, as far as the 45. It had just said about
19 half before. So, we just put a number in our revised --

20 EXAMINER: Well, I got to have somebody -- if you
21 want the 45, maybe the 45 will work but I've got to have
22 somebody in front of me who's going to say why, and not just
23 because it's, you know, a good thing to do. You see what
24 I'm saying? I need somebody in here to say why you want 45
25 except for flexibility. I don't know if that's Ms. Nemont

1 saying that or you saying that or the operator saying that.

2 MS. MEAD: What we're asking here seemed to defer
3 to the staff recommended condition for the 40 outside at one
4 time.

5 EXAMINER: Well, why when she said she could do 20
6 to 25?

7 MS. MEAD: Because it does provide the
8 flexibility. But, if 25 -- we're willing to commit to that.
9 I'm sorry. I didn't mean to --

10 EXAMINER: No. It's okay.

11 MS. MEAD: -- make it an issue but I just --

12 EXAMINER: I'm not making any of this an issue.

13 MS. MEAD: Yeah.

14 EXAMINER: I just want to know --

15 MS. MEAD: No. I didn't mean to.

16 EXAMINER: -- what's going to happen on the site,
17 and I don't want to have to go pick through the entire
18 record to figure out what still applies and what doesn't
19 still apply because the other thing I realized, and I
20 apologize, I didn't give you fair warning, is that I don't
21 have any testimony on storm water management for the revised
22 plan. There's nothing. I can't find it, and you don't have
23 a civil in here. So, how am I supposed to make a finding
24 that storm water management is met when I don't have
25 anything. I perused the staff report. Couldn't find it.

1 How am I suppose to make a finding on storm water
2 management?

3 MS. MEAD: I can have Mr. Sekerak from Greenhorne
4 and O'Mara to --

5 EXAMINER: Are you a civil or a land planner?

6 MR. SEKERAK: I'm a land respondent with --

7 EXAMINER: But not a civil engineer?

8 MR. SEKERAK: Greenhorne and O'Mara is a civil
9 engineering --

10 EXAMINER: I know it's a civil engineering firm.
11 So, I would have given you more warning. It wasn't until I
12 was perusing all this old staff reports today that I
13 realized I didn't have a storm water management person to
14 say, yes. It's going to work, and it's not even in the
15 staff report which I was kind of hoping it would be but it
16 wasn't. It had public water, sewer. So, anyway, I don't
17 know -- it's not fair to me or the opposite side to have to
18 piece together testimony on two prior iterations of this as
19 Mr. Orobono likes to call it, and try to figure out what's
20 applicable and what's not applicable. So, I don't have a
21 civil to testify on storm water management. So --

22 MS. MEAD: Well, I can call Mr. Sekerak into the
23 stand if you want to weigh his --

24 EXAMINER: But he's not a civil.

25 MS. MEAD: His firm prepares the storm water

1 management plan, and I've --

2 EXAMINER: So, what can he say?

3 MS. MEAD: I can bring him up here and have him --

4 EXAMINER: That he knows the guys, and he knows
5 they do a good job and therefore, it's going to work?

6 MS. MEAD: I can ask him on his experience with
7 preparing site plans and preparing storm water management
8 plans.

9 EXAMINER: Well, Mr. Sekerak, come up here. I --

10 MS. MEAD: I mean, I would like to finish on 5.

11 EXAMINER: Okay.

12 MS. MEAD: I do want to submit that --

13 EXAMINER: Okay. I just am uncomfortable that I
14 know how this is going to work, how the whole thing is going
15 to work and I think, you know, you have the plan and board
16 recommendation already. Again, I don't know why it didn't
17 go back to the planning board. That's not, I guess -- so, I
18 just want to be convinced that the way this things is going
19 to operate is going to work and be compatible. Really,
20 that's all this is. Okay? So, we'll finish with the
21 questions.

22 MR. LEIBOWITZ: I found the answer to our previous
23 question about the signing in and signing out in Ms.
24 Nemont's prior testimony.

25 EXAMINER: Yeah.

1 MR. LEIBOWITZ: And I'll read it into the record,
2 and I have it on page 42, line 18 of the transcript. It
3 says you park the car and walk the children inside and sign
4 in and take the children to their classroom, and the evening
5 is the same. They have to sign out and then they go to the
6 classroom and pick up their children. That's lines 18
7 through 22. So, I take that as they sign in and out at the
8 front of the building prior to going to the classroom.

9 EXAMINER: Okay.

10 MS. MEAD: And I wouldn't disagree with that. It
11 was just that she doesn't mention that there's a director
12 there overseeing the --

13 EXAMINER: How's the director going to coordinate
14 traffic then? If she's signing people in and out, how is
15 she going to be outside coordinating the traffic?

16 MS. MEAD: It depends on whether she needs to be
17 outside coordinating the traffic since it is --

18 EXAMINER: So, she's going to be -- I've got my
19 cross-examination hat on, and I'm taking it off. But, that
20 doesn't make sense to me that she can multi-task.

21 MS. MEAD: Mr. Leibowitz didn't disagree that
22 there's a director there with a sign in book having everyone
23 sign in and out in front of them, that there's a sign in
24 book that is in the front of the center and nor did the TMP
25 state the transportation coordinator is standing outside in

1 the parking lot the entire time with parents coming in and
2 parking. I mean, obviously, they would be able to be there
3 during the peak period to make sure that there are no issues
4 that arise and handle them.

5 EXAMINER: But, you're testifying again.

6 MS. MEAD: Well, okay. Well, I'm just trying
7 repeat --

8 EXAMINER: Yeah.

9 MS. MEAD: -- what the TMP states.

10 EXAMINER: Okay. Well, what about 6?

11 MS. MEAD: Can I just have one moment? I just
12 want to see what's, you know. They can't make a deception.

13 EXAMINER: Okay. Well, my question is this.
14 What, okay. Well, let's flush out the other ones and then
15 we're going to make a decision from there. Seven, is the
16 food -- I remembered. I saw in the record that the food --

17 MS. MEAD: We skipped 6?

18 EXAMINER: Oh. I'm sorry. Yes. You're right.
19 Is there still a special needs van coming?

20 MS. MEAD: No. That was oriented toward the
21 before and after care.

22 EXAMINER: School age?

23 MS. MEAD: School aged children.

24 EXAMINER: Okay. So, that's off the list.

25 MS. MEAD: And 7. Yes. That situation has all

1 changed.

2 EXAMINER: And when is that food going to come?
3 Is it coming in peak hour? Is it coming before peak hour?

4 MS. MEAD: Outside the peak hour

5 EXAMINER: Outside the peak hour.

6 MS. MEAD: -- which can be added to the statement
7 of operation, tax and miscellaneous items and if you feel
8 more comfortable to add it to that portion as far as an
9 addition.

10 EXAMINER: Okay. And the last one. Which is 8 on
11 the Exhibit 47.

12 MS. MEAD: Right. What does the transportation
13 management plan when it states that it will encourage staff
14 to use public transit? That is typical TMP language. The
15 transportation coordinator on page 1, it does note after it
16 talks about encouraging them to use transit, car pool and
17 van pool, it notes one of the ways they will do that will
18 invite Montgomery County Department of Transportation to
19 make presentations and/or explain county programs and answer
20 their questions about mass transit, public transportation
21 and car pooling and van pooling. Further, Ms. Nemont's
22 testimony had indicated that there probably would be a low
23 likelihood that they would need to encourage the staff given
24 her experience with her staff members at the other
25 facilities as far as use of public transportation and to

1 access the sites.

2 EXAMINER: Okay. Mr. Leibowitz?

3 MR. LEIBOWITZ: I don't have any questions for Ms.
4 Mead on that regard. If we had a live witness, I might have
5 questions.

6 EXAMINER: Well, we could do a couple of things.
7 I don't feel comfortable not having any evidence. I mean,
8 it's up to you. We can go forward today or we can take Ms.
9 Quinn and, I'm sorry, Mr. Zepp?

10 MR. ZEPP: Yes.

11 EXAMINER: Today. You know, I hate to drag the
12 community through yet another hearing date but we could set
13 another hearing date or you can just proceed with what we
14 have in the record today.

15 MS. MEAD: Well, I don't feel comfortable that the
16 hearing examiner doesn't feel comfortable with -- and I'm
17 sorry I didn't get the impression from your email that you
18 would need additional testimony on these since this had been
19 part of the original part of the record.

20 EXAMINER: Well, some of it I -- whatever.

21 MS. MEAD: No. I'm sorry. I misunderstood.

22 EXAMINER: I was not clear when I went through the
23 record was still applied and what didn't and when you reduce
24 the staff, how that was going to work. What's your
25 thoughts, Mr. Leibowitz?

1 MR. LEIBOWITZ: I hate to bring everyone back
2 again for the fifth time?

3 EXAMINER: Let's -- yeah.

4 MR. LEIBOWITZ: And so I think the people who are
5 here today should testify.

6 MS. MEAD: Yeah.

7 MR. LEIBOWITZ: And then maybe we could see where
8 we are.

9 EXAMINER: Let's get that finished and make a
10 decision on the other stuff later. So, let's call Miss --
11 oh. We also have the possibility of Mr. Sekerak addressing
12 the storm water management issues.

13 MR. LEIBOWITZ: And I'm going to object to that.

14 EXAMINER: I figured. I anticipated that.

15 MS. MEAD: I would submit that we can certainly
16 submit written testimony into the record on the storm water
17 management.

18 EXAMINER: It can't be written. He's got to write
19 the cross-exam. Do you waive your right to cross-examine?
20 It's up to you.

21 MR. LEIBOWITZ: On the storm water management?

22 EXAMINER: Yes.

23 MR. LEIBOWITZ: No. We actually did have
24 questions about that with regards to the new proposal.

25 EXAMINER: Okay. So, and that, you know, I didn't

1 realize that until I was going through the staff report two
2 days ago. But, the burden is not on me to present your
3 case. The burden is on you to cover the angles. So, but I
4 do apologize that I didn't pick up on it until I was going
5 through all the staff reports like, really, yesterday and
6 this morning. So, we'll go ahead and hear whoever wants to
7 testify today. We're going to continue with these,
8 opposition's case, and if you have testimony for rebuttal
9 that you'd like to present today, we can do that, too, and
10 proceed from there.

11 MS. MEAD: Okay. I'd just like to, in defense of
12 myself for the storm water management, the testimony from
13 the hearing was actually based on the larger plan before it
14 had been revised, and I believe our experts testimony had
15 indicated that with the reduced building at the time, it
16 would still need concept plan approval at that time, even
17 though there wasn't a concept approved for the revised plan
18 indicating that --

19 EXAMINER: Okay. And I, you know, I don't want to
20 come down on you. I just realized, though, that even though
21 the quantity may be less --

22 MS. MEAD: Yes.

23 EXAMINER: -- because you, you know, have a
24 smaller building envelope and parking, the drainage -- I
25 don't know what the drainage is.

1 MS. MEAD: Okay.

2 EXAMINER: And I don't know. I assume it's all
3 going to go in the gutter at Gilmore but I don't know. So,
4 you know, I'm not thinking that it's a huge testimony deal.
5 I just don't have it in the record. I don't know where that
6 northern portion of the site is going to drain, and I don't
7 know -- I assume the parking lots going to go in the gutter
8 on Gilmore but that's an assumption.

9 MS. MEAD: And those are affects that, although
10 there would be an objection, but I would have -- Mr. Sekerak
11 could certainly address them.

12 EXAMINER: Well, you know, those are my concerns
13 but I'm not a civil engineer. So, I'd just like something
14 in the record. Okay. Mr. Leibowitz?

15 MR. LEIBOWITZ: I think Ms. Quinn is going to
16 testify first. I'm told that Woodmoor has a second witness
17 also. So, he would testify after Ms. Quinn and then Mr.
18 Zepp.

19 EXAMINER: But, he's testifying on his own behalf?

20 MR. LEIBOWITZ: Correct.

21 EXAMINER: Correct.

22 MR. LEIBOWITZ: Well, they all are. They all are.

23 EXAMINER: Okay. All right. That's fine.

24 MS. QUINN: Actually, Mr. Zepp can go first and --

25 MR. LEIBOWITZ: Oh. I'm sorry. That's fine.

1 MS. QUINN: Followed by Mr. Pfetsch and then
2 myself.

3 MR. LEIBOWITZ: Yes.

4 MS. QUINN: Mr. Pfetsch was also a member of the
5 citizens advisory committee on the master plan.

6 MR. LEIBOWITZ: That's right.

7 EXAMINER: Okay. He can testify as an individual.

8 MS. QUINN: Yes.

9 EXAMINER: Okay.

10 MS. QUINN: We understand.

11 EXAMINER: That's fine.

12 MR. LEIBOWITZ: I'm confused about the order with
13 all the --

14 EXAMINER: No. It's fine.

15 MR. ZEPP: Where would you like me to sit?

16 EXAMINER: Why don't you sit over between Ms. Mead
17 and Mr. Leibowitz.

18 MR. ZEPP: All right.

19 EXAMINER: You have not testified previously in
20 this case. Correct?

21 MR. ZEPP: Not here. No. I testified at the
22 planning board hearing.

23 EXAMINER: Okay. Please state your name and
24 address for the record.

25 MR. ZEPP: Okay. My name is James H. Zepp, and I

1 live at 10602 Lockridge Drive. I had purposely --

2 EXAMINER: Okay. Before you proceed, raise your
3 right hand. Do you solemnly affirm under penalties of
4 perjury that the statements you're about to make are the
5 truth, the whole truth, and nothing but the truth?

6 MR. ZEPP: I do.

7 EXAMINER: Okay.

8 MR. ZEPP: All right. I had previously submitted
9 a written statement for the June 20th session of this
10 hearing.

11 EXAMINER: Uh-huh.

12 MR. ZEPP: I have subsequently amended it slightly
13 for some of the information that has come out since that
14 session.

15 EXAMINER: Uh-huh.

16 MR. ZEPP: So, should I just go ahead and read the
17 statement to you?

18 EXAMINER: You may.

19 MR. ZEPP: All right. Let's see. I am the
20 designated representative for the Northwood-Four Corners
21 Civic Association, the NFCCA, and a former president of that
22 organization. I am also, currently, a member of the
23 executive committee of the Montgomery County Civic
24 Federation and served as a member of the Four Corners Master
25 Plan Citizens Advisory Committee.

1 I wish to express the NFCCA's opposition to the
2 special exception, S-2781, request and endorsement of the
3 MNCPPC Planning Board staff's original recommendation which
4 was subsequently reaffirmed to deny this proposed project on
5 the grounds of not being compliant with the Four Corners
6 master plan exceeding the minimum state requirements for
7 childcare facilities and being incompatible with the
8 residences that predominantly characterize the area.

9 The North-Four Corners neighborhood consists of
10 about 1600 homes in the area directly across University
11 Boulevard from the parcel where the proposed childcare
12 center would be located. The residents are racially,
13 ethnically diverse, are well education compared to the rest
14 of the county's population, have a wide range of incomes and
15 occupations and include both long time community members as
16 well as relative newcomers to the area. I have attached
17 some demographic information to affirm those statements.
18 The housing stock is varied in size and style, is in good
19 condition, has ready access to natural, commercial, and
20 public amenities and services. In other words, it is a
21 stable and successful, livable community that has many of
22 the attributes which planners say they want to promote. The
23 other Four Corners neighborhoods also share these qualities.

24 This is the context under which the Four Corners
25 master plan was developed. Because our area was largely

1 built out with the construction of the Montgomery Blair High
2 School and the K-track property, the primary focus for
3 future planning efforts was the preservation and enhancement
4 of the positive qualities contributing to the communities
5 stability and livability while preventing changes that would
6 cause the deterioration of the areas existing integrity.

7 In particular, the Four Corners master plan CAC
8 members were concerned that the encroachment of commercial
9 establishments into the residential areas would gradually
10 undermine their strength and their adverse impact would
11 proliferate throughout the community.

12 In particular, I'd like to address the issues of
13 the proposed facilities proximity to the existing commercial
14 area. The applicant and his paid experts have made much of
15 the fact that the site for the proposed childcare center has
16 a distance of five homes between it and the existing
17 Safeway. Because the Four Corners master plan uses the
18 phrase immediately adjacent when it discusses discouraging
19 the granting of special exceptions for commercial structures
20 that would encroach on the surrounding residential areas,
21 the applicant argues that this request does not violate the
22 Four Corners master plans vision and directives.

23 As one of the contributors to that document, I
24 would encourage you and the zoning appeals board members to
25 not get caught up in debating details and definitions but

1 rather focus on the intent and purpose of the master plan's
2 goals and recommendations. This special exception request
3 clearly fails to meet the master plan's objectives to
4 curtail the spread of commercial structures into the
5 residential areas. It may even be worse because it bookends
6 a small number of homes between itself and the Safeway
7 grocery store which would make these properties more
8 vulnerable to pressures for conversion to commercial uses.
9 Consequently, the construction of this large facility will
10 likely foster the spread of commercial developments in the
11 immediately adjacent residential area which contradicts the
12 master plan's goals.

13 Another important consideration for the Four
14 Corners communities, as well, is the larger area, its
15 traffic congestion, and any potential deterioration of these
16 conditions. Residents must contend with cut through traffic
17 as drivers attempt to avoid delays at the Four Corners
18 intersection and deal with proposed highway projects that
19 will remove or reduce adjacent properties along road
20 alignments. For those who must travel through the Four
21 Corners area, I'm sure that they do not want more delays at
22 one of the busiest intersections in the state. These
23 concerns and thinking are reflected in statements throughout
24 the Four Corners master plan as in the following examples:

25 Four Corners is an established community with a

1 very small amount of develop-able land. This plan must
2 guide the development of remaining vacant properties in
3 residential neighborhoods and provide means to monitor the
4 special exception process so that such uses do not encroach
5 on residential character from page 19.

6 Preserve and maintain the character and integrity
7 of the existing well established Four Corners residential
8 neighborhoods as the foundation of the community by assuring
9 that new development, in field development, special
10 exception uses, are compatible with the existing residential
11 character from page 25.

12 In furtherance of these objectives, the Four
13 Corners master plan states that all future projects must be
14 carefully integrated into the existing community and
15 designed to enhance Four Corners image, appearance, sense of
16 place, and pedestrian safety from page X.

17 As noted by the MNCPPC staff, the communities'
18 concerns over possible special exception requests is
19 highlighted by the very specific language regarding this
20 issue in the Four Corners master plan. This plan
21 discourages special exceptions in residential areas
22 immediately adjacent to the commercial district.
23 Residential neighborhoods immediately adjacent to the Four
24 Corners commercial district are particularly vulnerable to
25 the encroachment of nonresidential uses as our single family

1 homes are along the major highways. Page 26.

2 The plan recommends reuse of existing structures
3 for special exception uses where feasible from page 26, and
4 if a use requires a new building, the plan encourages
5 designs that are residential in character and scale from
6 page 26.

7 Despite the subsequent revisions to this project,
8 we maintain that the original MNCPPC staff findings still
9 apply that the childcare center facility proposed in the
10 special exception request, S-2781, does not comply with the
11 objective and recommendations established in the Four
12 Corners master plan.

13 Furthermore, the master plan states that
14 pedestrian safety and community character are jeopardized
15 when non-local traffic cuts through residential streets.
16 This plan recommends that measures continue to be taken to
17 protect neighborhoods from these intrusive impacts from page
18 XII. As configured, the proposed childcare center would
19 result in substantial traffic being drawn into the adjacent
20 residential streets during rush hour time periods and would
21 encourage additional cut through traffic in the
22 neighborhoods. Therefore, the special exception, S-2781,
23 request should be denied for its adverse transportation and
24 pedestrian safety impacts.

25 Finally, I would like to address some

1 mischaracterizations by the applicant that I've heard in the
2 previous sessions of this hearing regarding the Four Corners
3 master plan and the property at 219 West University
4 Boulevard.

5 One, special exceptions are so important to a
6 developed neighborhood that the Four Corners master plan has
7 guidance on special exceptions on three separate pages, 19,
8 25, and 26. Unlike the master plans referenced by the
9 applicant on November 10, 2011, this guidance specifically
10 addresses new construction. The language used in the Four
11 Corners master plan regarding the prohibition of special
12 exception requests of this nature in this area was the
13 strongest allowed by the MNCPPC staff at that time.

14 Two, the Four Corners master plan does not
15 recommend an office for this site. Figure 12 on page 28 of
16 the master plan clearly shows this site as having
17 residential zoning currently and into the future. The
18 master plan merely recognized the home dentist office as an
19 existing use at the time the document was written.

20 Three, the Four Corners master plan does not
21 recommend a childcare or a school like facility on this site
22 or any nearby properties. Consequently, any claims that the
23 proposed facility would be restoring the former character of
24 the area is irrelevant as far as any future plans by the
25 community or the county. In reference to the six acre site

1 of the former Uesheba, the master plan provides the guidance
2 that the property owner may rebuild a school on this site
3 which is an appropriate use for this site, page 25. The
4 master plan says nothing about other owner's owner lots at
5 the intersection or anything about childcare. As the master
6 plan was being finished, the Uesheba site requested a re-
7 zoning of its property for a high density town home
8 development because it intended to move the school facility
9 to a newly purchased property in Laytonsville and wished to
10 sell the West University Boulevard site. That the Uesheba
11 school had no intention of remaining at its previous
12 location was further confirmed when it chose to accept a
13 lease for a vacant Montgomery County public school building
14 when its request for re-zoning of the Laytonsville site was
15 denied.

16 The Four Corners master plan CAC denied the
17 Uesheba school's re-zoning request because of its potential
18 impact on local traffic congestion which was emphasized by
19 the state highway administration's efforts to implement
20 drastic modifications to the areas roadways. The Four
21 Corners community had recently negotiated a compromise with
22 the SHA which is reflected in the transportation section of
23 the master plan. Consequently, the CAC was reluctant to add
24 more cars to the traffic in this immediate area because of
25 the potential detriment to the agreed upon roadway

1 improvements. Consequently, the master plan did recommend
2 the purchase by the county of the former Uesheba School site
3 for park land, page 58.

4 Because of the loss of 42 acres of trees with the
5 construction of the Blair High School on the K-track
6 property, this acquisition could also help to fulfill up a
7 local reforestation recommendations in the master plan, page
8 XVI.

9 Therefore, neither the Uesheba School nor the
10 master plan CAC attempted to replace this property or any
11 nearby properties with a school building or childcare
12 facility. With its purchase of the former Uesheba School
13 site for park land in 19, I'm sorry, 1998, the county did
14 comply with the master plan's recommendations.

15 Four, regarding the residents at 219 West
16 University Boulevard which has two structures on the lot and
17 is located directly across University Boulevard from the
18 applicant site. The applicant has estimated that the
19 combined structures are over 4,000 square feet. If the
20 owner of that property had filed a special exception request
21 to conduct the unlicensed commercial activities which he has
22 been repeatedly investigated, the Northwood-Four Corner
23 Civic Association would have opposed the request on grounds
24 similar to today's statement. As it is, the structures are
25 atypical of the area and should not be considered an example

1 of the residences that characterize the adjacent community
2 as a means to justifying the applicant's special exception
3 request. A few blocks away is what may be the oldest house
4 in the county and yet the applicant is not constructing a
5 building in the style of the 1780s.

6 The Four Corners master plan CAC members and the
7 MNCPPC community planning staff worked for nearly three
8 years on this document from its inception, to review, and
9 final approval by the planning board and the county council.
10 Much of this time was spent on examining the trends and
11 issues facing the Four Corners neighborhoods and discussing
12 strategies for sustaining their stability and functioning as
13 healthy communities. I ask that you respect this effort to
14 ensure our community's future well being by affirming the
15 original planning board and staff recommendations and by
16 denying this special exception request.

17 EXAMINER: If I may before I turn it over to Ms.
18 Mead for cross-examination, I had a couple questions because
19 when I read the planning board's second denial or first
20 denial. I can't remember which one. They said they didn't
21 read the master plan as prohibiting special exceptions, and
22 I think the applicant argued that there are some places in
23 the master plan, like page 12, that indicate that a
24 childcare maybe enhance a neighborhood. So, I guess my
25 question is, is it the size of this facility or is it the --

1 just the fact of the commercial use that you object to?

2 MR. ZEPP: Okay. I would --

3 EXAMINER: And I know I took you by surprise. So,
4 if you want to look. I think the applicant referred to
5 language, a daycare, in that middle paragraph that begins in
6 neighborhoods. Page 12.

7 MR. ZEPP: Page 12?

8 EXAMINER: Yeah.

9 MR. ZEPP: Okay.

10 EXAMINER: It says the other low-density uses such
11 as elderly, I don't know why I can't talk today, elderly
12 housing, daycare, a school, or professional offices also may
13 be located within a neighborhoods boundaries.

14 MR. ZEPP: Well, as you point out, it does say low
15 density.

16 EXAMINER: Okay. So, it's the size and scale that
17 you--

18 MR. ZEPP: Size and scale, but also particularly
19 that location that --

20 EXAMINER: And what about that location?

21 MR. ZEPP: Given its close proximity to the
22 commercial area, this is that transition zone.

23 EXAMINER: Okay.

24 MR. ZEPP: And I guess the concern about the
25 incremental--

1 EXAMINER: The spread.

2 MR. ZEPP: -- encroachment.

3 EXAMINER: Got you.

4 MR. ZEPP: What we have attempted to do is to
5 ensure the health of the existing commercial area. We have
6 supported an economic development project by the county to
7 help the businesses there to survive.

8 EXAMINER: Okay.

9 MR. ZEPP: So, we've actively supported those
10 kinds of activities. We've actually even recruited
11 businesses to some of the commercial sites in the area.

12 EXAMINER: At the commercial core?

13 MR. ZEPP: Right.

14 EXAMINER: Okay.

15 MR. ZEPP: So, we want that to stay healthy but at
16 the same time, we also want the residential areas to retain
17 their character. There's a high level of home ownership
18 which is one indicator for stable neighborhoods is having
19 that happen. Some of the nearby areas around us have
20 deteriorated over time. Some of the concerns when the
21 master plan was being created were some of the problems
22 experiencing there and continue to experience. For example,
23 recently Police Chief Manger, at a public meeting, said that
24 the McDonald's in the White Oak had one of the highest calls
25 for service in the county. So, there are crime problems

1 occurring fairly close to our community while we still
2 happen to maintain a very low incidence of serious crimes,
3 and so, we are attempting to maintain that character as much
4 as we can given that close proximity of some of the problems
5 that are occurring.

6 EXAMINER: Okay.

7 MR. ZEPP: So, and, yeah. Also as printed on page
8 61, under specifically daycare services, that the last
9 sentence says that there are no current plans to provide
10 additional daycare facilities in the Four Corners.

11 EXAMINER: Under the paragraph daycare services?
12 Oh. I see it. The last sentence there.

13 MR. ZEPP: Yeah.

14 EXAMINER: All right. Ms. Mead, and then Mr.
15 Leibowitz even though it isn't technically redirect, I'll
16 let you have, okay?

17 MR. ZEPP: Could I add one more comment?

18 EXAMINER: Yeah. Sure. Sure. Absolutely.

19 MR. ZEPP: That I share your earlier concern
20 regarding promises that are made regarding operations of the
21 facility and specifically, I would relate to the McDonald's
22 that was put in in the Four Corners area. It subsequently
23 requested a, I'm sorry, a drive through window, and the
24 promise was made at that time that it would not be a 24 hour
25 operation when it was presented to the community to get our

1 acceptance. After the window was installed and everything
2 like that, McDonald's then came back for an administrative
3 amendment to allow 24 hour operations. So, consequently,
4 the promises made to the community were not only unfulfilled
5 but basically allowed them to the get the thing in and then
6 once its in, it's very difficult to get it to be removed or
7 whatever, and I think that's one of our concerns here is
8 that I happen to work in the criminal justice field and so
9 very much involved with penalties, and if you only have one
10 extreme penalty such as the revoking of a special request,
11 it then has to be an extremely serious, egregious offense
12 for that penalty to be invoked, and so we're dealing with
13 this problem here of there's no intermediate penalties, and
14 so it's somewhat up to the applicant's benefit to promise
15 things and then bend the rules later because the system is
16 very reluctant to invoke the ultimate penalty because that's
17 the only thing that's available, and so then the community
18 basically suffers because of nonperformance, and so we've
19 had that happen in instances like this where promises go
20 unfulfilled or are reneged upon once the facility is
21 installed or established.

22 EXAMINER: Okay. All right. Ms. Mead? Your turn
23 for cross-examination.

24 MS. MEAD: Thank you. Mr. Zepp, you noted that on
25 page 21 of the master plan that the land use plan doesn't

1 state office for the future of this site. Is that correct?

2 MR. ZEPP: What? Well, actually what I was
3 referring to was the zoning plan which is on page 28.

4 MS. MEAD: Well, then I will refer you to page 21,
5 the land use plan for this property. What use does it
6 designate?

7 MR. ZEPP: Well, it shows an office.

8 MS. MEAD: But the land use plan, does it say
9 existing land uses?

10 MR. ZEPP: No.

11 MS. MEAD: Because it says land use plan.

12 MR. ZEPP: Right.

13 MS. MEAD: Thank you.

14 MS. MEAD: You noted that on page 26 regarding
15 special exceptions that this is the strongest language that
16 the planning board or the council allowed but are you aware
17 of the other master plans in the record where there was
18 language that referred to the specific sizes of special
19 exception uses?

20 MR. ZEPP: Yes. I'm also aware of the planning
21 staff's statement in their original denial that cited this
22 as being especially strong language exceptional to this
23 plan. Mr. Orobono's --

24 MS. MEAD: Did that staff report related to the
25 proposed use that's before us today?

1 MR. ZEPP: Yes.

2 MS. MEAD: And the proposed structures on the
3 site?

4 MR. ZEPP: Yes. It was Mr. Orobono's original
5 recommendation, and he cited this master plan as being
6 exceptional in its specificity regarding this.

7 MS. MEAD: Yes. But are there not six examples of
8 the master plan language in the record which are more strong
9 and more specific on size and scale? Should I read them to
10 you? For example the Bethesda-Chevy Chase master plan had
11 language that special exceptions should not be significantly
12 larger than any nearby structures and that was in 1990. Are
13 you familiar with that language in the 1992 North Bethesda
14 Garret Park should not be significantly larger than nearby
15 structures?

16 MR. ZEPP: But it doesn't say discourages special
17 exceptions in a particular location.

18 MS. MEAD: Well, as the hearing examiner pointed
19 out, the planning board report -- would you agree that it
20 does not specifically -- their opinion was that it didn't
21 specifically prohibit this use at this location.

22 MR. ZEPP: If the CAC had been allowed to use that
23 language, we would have used it.

24 MS. MEAD: Well, the CAC doesn't adopt the master
25 plan. Isn't that correct? Isn't it done by the planning

1 board and the county council?

2 MR. ZEPP: They approve it.

3 MS. MEAD: Yes. That is correct? Right?

4 MR. ZEPP: That we develop --

5 MS. MEAD: That the advisory committee does not.

6 MR. ZEPP: Right.

7 MS. MEAD: Thank you.

8 MR. ZEPP: But, we're talking about what the
9 intent of the plan --

10 MS. MEAD: You answered my question. And, in
11 fact, didn't the county council on page 4 of its resolution
12 adopting the master plan, and I have -- the resolution is in
13 the back of the master plan on page 4, the underlying
14 language that was added didn't the county council add
15 language regarding the Uesheba site being appropriate use
16 for that site?

17 MR. ZEPP: I didn't understand the question.

18 EXAMINER: I'm confused, too. Can you be more
19 specific about the language you're talking about? This is
20 on page 4 of the resolution 13-7.5?

21 MS. MEAD: Correct.

22 EXAMINER: Okay.

23 MS. MEAD: On page 4.

24 EXAMINER: And where's the language?

25 MS. MEAD: The underlined language shows, which

1 on --

2 EXAMINER: I see.

3 MS. MEAD: -- page 4 it shows -- the added
4 language is shown by the underscoring.

5 EXAMINER: I see one about a school.

6 MS. MEAD: Correct. Mr. Zepp had testified that
7 -- his testimony included that the master plan not recommend
8 a school for this area or daycare.

9 EXAMINER: Oh. Oh. I thought you were talking
10 about --

11 MS. MEAD: And the council -- this underlying
12 language, does it not specifically indicate that the council
13 added language to the master plan when it received it that
14 noted that a school is appropriate on the site which is
15 caddy corner to this particular site?

16 MR. ZEPP: It said that if a school is not built,
17 then the site may be developed for residential purposes?

18 MS. MEAD: Right. The language above that. Does
19 it not read the property owner may rebuild a school on this
20 site which is an appropriate use for this site?

21 MR. ZEPP: Uh-huh.

22 MS. MEAD: If you could say yes or no for the
23 record.

24 MR. ZEPP: Yes.

25 MS. MEAD: Thank you. In your testimony you noted

1 that the North Four Corner Civic Association is comprised of
2 a variety of homes. Is the 219 West University Boulevard in
3 the North- Four Corners neighborhood?

4 MR. ZEPP: Yes.

5 MS. MEAD: In your testimony, you noted about the
6 commercial area. Did the staff find that there's any
7 existing special exceptions in the defined neighborhood or
8 between this property and the commercial area?

9 MR. ZEPP: Not.

10 MS. MEAD: I'll refer you to page 9 of their staff
11 report dated -- I'll go back to the original one dated
12 November 3, 2011.

13 MR. ZEPP: Okay. I got --

14 EXAMINER: I think that's Exhibit 47, for the
15 record.

16 MR. ZEPP: Okay. I don't have that one here.

17 MS. MEAD: Okay. Well, you can use the --

18 EXAMINER: I think I have it here.

19 MR. LEIBOWITZ: Maybe she can show the witness
20 what she's referring to.

21 EXAMINER: Well, I have Exhibit 47 if you want to
22 or she can -- she just gave it to him. What page are you
23 referring to, Ms. Mead?

24 MS. MEAD: That is page 9.

25 MR. ZEPP: Yes.

1 MS. MEAD: So, there is no other special exception
2 or business between this property and the Safeway store in
3 the Four Corners commercial area on West University
4 Boulevard?

5 MR. ZEPP: That statements accurate. Yes.

6 EXAMINER: Well, to your knowledge.

7 MS. MEAD: To your knowledge are there any?

8 MR. ZEPP: No. I'm not aware of any.

9 MS. MEAD: So, there's no commercial structures
10 between this property and the commercial area and the master
11 plan noted that there is an office use on this property.

12 MR. ZEPP: There was an existing office use. Yes.

13 AM; And in the land use plan, it recommended an
14 office use on this property?

15 MR. ZEPP: It did not recommend that. It
16 acknowledged the existing home office that was there at the
17 time. I mean, we're not going to recommend demolition of
18 an existing structure.

19 MS. MEAD: Does that plan on page -- does it say
20 existing land uses or does it say land use plan for the
21 property?

22 EXAMINER: I'm sorry. Where are you in the --

23 MS. MEAD: On page 21.

24 MR. LEIBOWITZ: If I could object. She's
25 basically arguing with the witness. This question's been

1 asked and answered. She doesn't like the answer. So, you
2 keep asking it again.

3 EXAMINER: Well, okay. I think she's asking what
4 does the -- okay. Just limit it to what does the land use
5 plan show on figure 9.

6 MR. ZEPP: It shows an office.

7 MS. MEAD: Thank you. Mr. Zepp, are you familiar
8 with the transportation management plan for the proposed
9 use?

10 MR. ZEPP: Somewhat. Yes.

11 EXAMINER: And what exhibit is that because we
12 have a --

13 MS. MEAD: 96(I).

14 MR. LEIBOWITZ: If Ms. Mead's going to ask the
15 witness questions about the transportation management plan,
16 if she can show it to him that would be helpful. Rather
17 than make him look to see if he even has a copy of it.

18 MS. MEAD: My question was just if he was familiar
19 with the transportation management plan and the conditions
20 proposed in the transportation management plan.

21 MR. LEIBOWITZ: And he said somewhat.

22 MS. MEAD: Are you familiar with the commitment to
23 having board meetings with the community liaison council for
24 the special exception applicant and owner?

25 MR. ZEPP: Yes.

1 MS. MEAD: Are you familiar with the condition to
2 provide annual reports to the Board of Appeals on the use
3 regarding the current enrollment and number of staff on
4 site, the staff using public transportation regularly,
5 description of any parking and transportation issues
6 regarding the community liaison, community meeting notices,
7 agendas and minutes as we noted, special event parking
8 issues, and sending a copy of the annual reports to the
9 South Four Corner Civic Association?

10 MR. ZEPP: May I ask a question?

11 EXAMINER: Yeah.

12 MR. ZEPP: Okay. How is the term community
13 defined?

14 EXAMINER: Well, I can't -- you have -- okay. Let
15 me think about this. This is not your turn to ask
16 questions.

17 MR. ZEPP: Okay.

18 EXAMINER: You can simply say do you know. But
19 then you have the right after she's finished questioning you
20 and after Mr. Leibowitz has questioned you, you get the
21 right to come back and clarify anything you feel that, you
22 know, wasn't properly understood.

23 MR. ZEPP: Okay.

24 EXAMINER: So, I would recommend that you make a
25 note of it somewhere because some people when they're

1 getting asked questions they forget to come back. So, make
2 a note of it and then you simply need to answer Ms. Mead's
3 question. All right?

4 MR. ZEPP: Yes.

5 EXAMINER: This is attorney 101 since you're
6 unrepresented here.

7 MR. ZEPP: Uh-huh. Uh-huh.

8 EXAMINER: But, you're doing an excellent job.

9 MR. ZEPP: Thank you.

10 EXAMINER: As is all the witnesses.

11 MR. ZEPP: Yes. I'm aware of those provisions.

12 MS. MEAD: All right. Do those meetings with the
13 community liaison council provide an avenue for the
14 community to have input into and contact with the special
15 exception user?

16 MR. ZEPP: Maybe. Yes.

17 EXAMINER: Well, if you're not sure, just, or you
18 don't know.

19 MR. ZEPP: I guess -- yeah. I guess that's why it
20 gets to my question about how's the community defined.

21 EXAMINER: Okay. Okay. So, okay. All right.

22 Ms. Mead, can you rephrase or come up with some
23 clarification of -- it says community. Is your question --
24 is the South Four --

25 MS. MEAD: It's community liaison council. I can

1 answer his --

2 EXAMINER: Who's on the community liaison council?

3 MS. MEAD: I was going to note that the
4 transportation coordinator notes that it shall meet with the
5 South Four Corner Civic Association representative and
6 interested neighbors twice a year for the first four years
7 of operation. These meetings refer to as a community
8 liaison council.

9 EXAMINER: Okay.

10 MS. MEAD: That defines the community liaison
11 council.

12 EXAMINER: Okay. So, given that clarification,
13 are you aware of that?

14 MR. ZEPP: I'm aware of that provision. It
15 doesn't include my community.

16 EXAMINER: Okay. Then that is your point to say
17 on -- you get to rise from, like a phoenix. You get to rise
18 from the ashes. So, continue, Ms. Mead.

19 MS. MEAD: All right. And with the North Four
20 Corners, as an interested neighbor, if they would be
21 interested on their community liaison council, would that
22 offset provide them an opportunity to participate regarding
23 any operations issues before it would get to a point as the
24 McDonald's did per your testimony?

25 MR. ZEPP: Yes.

1 MS. MEAD: Thank you. And you noted on page 61 at
2 the time of the 1996 master plan, there was no plans on
3 record for a daycare but doesn't the master plan also refer
4 to daycares being part of neighborhoods on page 12 as the
5 hearing examiner pointed out in the neighborhoods as well as
6 on page 14? Doesn't the master plan note that additional
7 services that support community life can be found throughout
8 the neighborhoods including child daycare centers?

9 MR. ZEPP: Yes. But, as I noted, low density
10 daycare.

11 MS. MEAD: And are you familiar with the revised
12 plan before us today regarding the proposed special
13 exception building and density?

14 MR. ZEPP: Yes.

15 MS. MEAD: All right. Thank you. I have no
16 further questions for Mr. Zepp.

17 EXAMINER: All right. Mr. Leibowitz?

18 MR. LEIBOWITZ: You testified that you were a
19 contributor to the master plan. Right?

20 MR. ZEPP: Yes.

21 MR. LEIBOWITZ: And you were on the citizens
22 advisory committee?

23 MR. ZEPP: Yes.

24 MR. LEIBOWITZ: In fact, your name is actually in
25 the book, the master plan?

1 MR. ZEPP: Yes.

2 MR. LEIBOWITZ: And so is it fair to say that you
3 have a somewhat unique insight into how this was developed?

4 MR. ZEPP: I believe so. Yes.

5 MR. LEIBOWITZ: Okay. Were you involved in the
6 development of the language that we've been discussing today
7 on page 26 of the master plan which reads this plan
8 discourages special exceptions in residential areas
9 immediately adjacent to the commercial district?

10 MR. ZEPP: Yes.

11 MR. LEIBOWITZ: What was the purpose of using that
12 language? What was the intent of the citizens advisory
13 committee and others who were involved in developing the
14 master plan in using that language?

15 MR. ZEPP: Well, our concern was preserving the
16 stability of the neighborhood which we could see would be
17 undermined if residential properties were increasingly
18 converted or subject to pressures to commercial usages. So,
19 what we were attempting to do here was to try and maintain
20 as much as possible the existing character of both the
21 commercial area and the residential areas.

22 MR. LEIBOWITZ: The next paragraph reads the plan
23 recommends re-use of existing structures for special
24 exception uses where feasible. What was the purpose of that
25 language?

1 MR. ZEPP: Again, it was the sort of preservation
2 oriented nature of the goals and visions here that we didn't
3 see the area as being transformed radically but instead
4 keeping the character as is.

5 MR. LEIBOWITZ: The discourages language. There's
6 been a lot of discussion about that. Was there a lot of
7 discussion in coming up with that language, discourages
8 special exceptions?

9 MR. ZEPP: Yes. There was discussion between the
10 members and the staff as to how that could be phrased and
11 this was as strongly worded as we could get that.

12 MR. LEIBOWITZ: Was it important to the community
13 that that language be strongly worded?

14 MR. ZEPP: Yes.

15 MR. LEIBOWITZ: Now, you were asked repeatedly
16 regarding figure 9, on page 21. Your testimony was actually
17 regarding figure 12 on page 28, residential zoning plan, and
18 on figure 12 is the subject property zoned residential or
19 commercial?

20 MR. ZEPP: Residential. One-family.

21 MR. LEIBOWITZ: And then on page 33, figure 13.

22 MR. ZEPP: Yes?

23 MR. LEIBOWITZ: This is the existing commercial
24 zoning?

25 MR. ZEPP: Yes.

1 MR. LEIBOWITZ: How is the subject property zoned
2 in figure 13, existing commercial zoning?

3 MR. ZEPP: It is residential. It's not
4 commercial.

5 MR. LEIBOWITZ: And then on the next page, figure
6 14, page 34, commercial zoning plan. How is the subject
7 property depicted in the commercial zoning plan?

8 MR. ZEPP: Again, it's residential and not
9 commercial.

10 MR. LEIBOWITZ: Okay. Now, you were asked about
11 whether there are commercial structures between the Safeway
12 and the subject property and the answer was no. Isn't that
13 really the point?

14 MR. ZEPP: Yes.

15 MR. LEIBOWITZ: You were asked a number of
16 questions about the traffic management plan. Do you believe
17 that the TMP provides adequate protection for the community?

18 MR. ZEPP: No. I do have concerns regarding that
19 in terms of how well that would be enforced and implemented.

20 MR. LEIBOWITZ: Are you opposed to the existence
21 of daycares generally?

22 MR. ZEPP: No.

23 MR. LEIBOWITZ: No further questions.

24 EXAMINER: Anything else that you wish to say?

25 You have a point about, I think, being part of -- whether

1 your community is going to be part of the transportation
2 management plan?

3 MR. ZEPP: Well, actually whether we would be
4 included in the concept of community for this facility.

5 EXAMINER: Okay.

6 MR. ZEPP: To that very point, when we postponed
7 this hearing after the June 20th session --

8 EXAMINER: Yes.

9 MR. ZEPP: The applicant had made the point about
10 being interested in hearing more community feedback
11 regarding the proposal, and while he sought input from South
12 Four Corners, he did not seek any input from any of the
13 surrounding neighborhoods including mine even though I've
14 been present through even the earliest meetings.

15 EXAMINER: Right.

16 MR. ZEPP: So, it seemed to me, anyway, that the
17 applicant's concept of community only applies to South Four
18 Corners.

19 EXAMINER: Okay. So, your position is that you
20 would like the community, as far as the traffic management
21 plan, expanded to include -- and yours is North --

22 MR. ZEPP: Northwood-Four Corners.

23 EXAMINER: Okay.

24 MR. ZEPP: But given the nature of that
25 intersection, any impact on congestion affects that entire

1 area. But, that's the nature of Four Corners.

2 EXAMINER: And when you say that intersection, are
3 you talking about Brunett and University or Four Corners?

4 MR. ZEPP: Well, if Brunett is impacted, it
5 impacts the rest of the Four Corners area there. As a
6 matter of fact, I take the bus every morning past there, and
7 it's not unusual to have to sit through four or five light
8 cycles --

9 EXAMINER: On University.

10 MR. ZEPP: -- on University to get through that
11 intersection.

12 EXAMINER: Are you heading towards Colesville?

13 MR. ZEPP: Yes.

14 EXAMINER: Or away?

15 MR. ZEPP: I'm heading exactly right past this
16 parcel.

17 EXAMINER: Okay. On University eastbound.

18 MR. ZEPP: On University heading east.

19 EXAMINER: Okay.

20 MR. ZEPP: I might enlighten you. Part of the
21 problem is because of the on ramp to the Beltway on Route
22 29. That backs up so that the traffic trying to get onto
23 the Beltway from Route 29 backs up, blocks the intersection
24 which then blocks University. So, like I said, many
25 mornings, it's four or five light cycles before we can get

1 through there already.

2 EXAMINER: Okay. Any questions based on my
3 questions?

4 MS. MEAD: Yes.

5 EXAMINER: Or do you want rebuttal from Mr.
6 Starkey? Either one.

7 MS. MEAD: Well, I can just -- just on your
8 questions, though. Not on --

9 EXAMINER: Just on my questions.

10 MS. MEAD: -- Mr. Leibowitz's. Is the University
11 and Georgia Avenue intersection part of the traffic study of
12 the intersections that park and planning staff --

13 MR. ZEPP: You said University and Georgia. No.

14 MS. MEAD: Colesville. Not on Georgia. Does the
15 intersection you were just describing --

16 EXAMINER: If you know.

17 MR. ZEPP: Not off hand. I'd have to look at the
18 document.

19 EXAMINER: Okay.

20 MR. ZEPP: At least that's --

21 MS. MEAD: Would you support the TMP or feel more
22 comfortable if the TMP included the Northwood-Four Corners
23 Civic Association as one of the attendees as part of the
24 community liaison council?

25 MR. ZEPP: Yes. Because we'd be impacted.

1 MS. MEAD: And those are all the questions I have
2 based on yours.

3 EXAMINER: Okay.

4 MR. LEIBOWITZ: Your community is --

5 EXAMINER: Solely based on my and Ms. Mead's
6 questions.

7 MR. LEIBOWITZ: Correct. Yes.

8 EXAMINER: That's all.

9 MR. LEIBOWITZ: Your community is actually part of
10 the defined neighborhood in the application. Right?

11 MR. ZEPP: Yes.

12 EXAMINER: Okay.

13 MR. LEIBOWITZ: And you testified about the
14 traffic that you sit through in the morning. Does the
15 traffic sometime, if you noticed, does the traffic sometime
16 block the intersection of Burnett and University Boulevard
17 eastbound?

18 MR. ZEPP: It can. Yes.

19 EXAMINER: Okay. Okay. I'm going to cut it off
20 there then if that's your last question.

21 MR. LEIBOWITZ: That was.

22 EXAMINER: And I'm sure Mr. Starkey is going to
23 come back and have something to say about it if he wishes.
24 Okay. Do you have anything else to say?

25 MR. ZEPP: No. I don't.

1 EXAMINER: Okay. Thank you. And who is next?

2 MS. MEAD: Mike Pfetsch.

3 EXAMINER: Good afternoon. Is it Pfetsch?

4 MR. PFETSCH: Pfetsch. Exactly. P-F-E-T-S-C-H.

5 P-F-E-T-S-C-H.

6 EXAMINER: Okay. That old me. Please raise your
7 right hand. Do you solemnly affirm under penalties of
8 perjury that the statements you are about to make are the
9 truth, the whole truth, and nothing but the truth?

10 MR. PFETSCH: I do.

11 EXAMINER: Did you get his name for the record?

12 MS. MEAD: I just have a question. Which
13 association you are --

14 MR. PFETSCH: I'm speaking as a former member of
15 the CAC, and I'm not representing any association right at
16 the moment.

17 EXAMINER: Okay. So, you're speaking as an
18 individual?

19 MR. PFETSCH: That's correct.

20 EXAMINER: Okay. And I just need your address for
21 the record, please.

22 MR. PFETSCH: For the record, I am Michael G.
23 Pfetsch. I live at 9906 Indian Lane, Silver Spring,
24 Maryland.

25 EXAMINER: Okay.

1 MR. PFETSCH: Which is in the Woodmoor section of
2 the Four Corners master plan.

3 EXAMINER: Okay.

4 MR. PFETSCH: I'm going to speak today in
5 reference to the, particularly the history. I have not
6 followed this case to date. So, I will not be able to
7 answer any specific questions about transportation
8 management plan or anything else.

9 I do want to have, since I do want to put a little
10 bit of context on the discussion and the development of the
11 master plan. As everybody knows the story with Four
12 Corners, it's a transportation, highly transportation impact
13 community. It's very heavily impacted by cars both on
14 University Boulevard and Colesville Road and the Beltway,
15 which is not very far away.

16 The purpose of the -- the intent of the
17 development of the master plan was to try to create an
18 environment for both the citizens and the commercial
19 community so that they could co-exist well and operate well
20 together, and to that purpose, one of the things that we
21 established fairly on was clear station of defining what was
22 a high impact area and degrading down to what would the
23 residential areas, in particular the areas immediately
24 surrounding the intersection of University Boulevard and
25 Colesville were designated unofficially as high impact

1 areas. As you go a little bit further away from that
2 intersection, we tried to delineate which were the non-high
3 impacting businesses and then finally to show where the
4 residential and community commercial zones were delineated
5 between the two, and one of the purposes of the development
6 of the master plan was to try to keep that boundary intact
7 between residential and commercial areas.

8 Since the development of the master plan, we have
9 on all instances where we had the opportunity to impact it,
10 defended that demarcation. As you heard McDonald's
11 mentioned, there were several other requests for fast food
12 which we defended the community, the residential parts of
13 the community, fairly vigorously when they seemed to get
14 fairly close to the boundaries and, in fact, when daycare
15 was recently proposed in our community, we examined the
16 impact of it very carefully, and I believe that application
17 was withdrawn. It was also intended to be along University
18 Boulevard. So, the placement of any potential business near
19 University Boulevard or Colesville Road has to be looked on
20 very, very carefully because of the potential that that
21 activity would be stretching the commercial zone into the
22 residential. So, those are the particularly highly impacted
23 areas along the thoroughfares.

24 One of the things that we were very, very careful
25 to observe was once a property was designated as a special

1 exception, it would be very difficult to reverse the
2 process, very unlikely that it would ever become residential
3 again. So that once it became a business, then we would
4 find that it could transfer not to something more benign but
5 something more difficult for us to deal with.

6 We believe that for this particular application,
7 we believed in the context of the development of the master
8 plan. We believe that applications like this would breach
9 the demarcation between the existing commercial and the
10 residential areas. There was some questions about the
11 language, and I remember that discussion very, very
12 carefully.

13 EXAMINER: The master plan language, you mean?

14 MR. PFETSCH: About the discussion between what
15 was -- the discouragement of special exceptions.

16 EXAMINER: Okay.

17 MR. PFETSCH: And I remember that very carefully
18 because we argued very, very vigorously against that
19 provision be in there. The staff said that we could not
20 absolutely prohibit it. So, we ended up with the word
21 discouraged only because the staff insisted on it. The
22 intent was that we would prohibit it entirely. That does
23 not mean you go back and re-do grand fathering in to the
24 ones that are already there but the intent was that any
25 further special exceptions be prohibited if at all possible.

1 So, we were very clear on that language.

2 In that context, we believe that the daycare isn't
3 the issue. The scale isn't the issue. The real issue is do
4 we want to break the master plan, and we believe this is the
5 kind of activity that should not go on. The property owner
6 demolished a residence and now he wants to build a two-
7 horned business into the community. It's an inversion and
8 is not in compliant with the intent of the master plan.

9 EXAMINER: Okay. All right. Does that conclude
10 what you wanted to say?

11 MR. PFETSCH: Uh-huh.

12 EXAMINER: Okay. Ms. Mead, cross-examination?

13 MS. MEAD: Mr. Pfetsch, you indicated that your
14 citizen advisory committee wanted stronger language. You
15 wanted them prohibiting special exceptions in residential
16 areas immediately adjacent to the commercial district and
17 putting aside what that immediately adjacent means that you
18 indicated that you wanted language stronger than discourage?

19 MR. PFETSCH: That's correct.

20 MS. MEAD: But the adopted master plan by the
21 planning and boarding council used the term discourage. Is
22 that correct?

23 MR. PFETSCH: I understand.

24 MS. MEAD: Thank you.

25 MR. PFETSCH: That was not our intent.

1 MS. MEAD: You answered my question. And your
2 testimony that the daycare use itself is not an issue, and
3 the scale of the special exception is not an issue but
4 instead having the special exception in and of itself? Do I
5 understand you correctly?

6 MR. PFETSCH: That's correct.

7 MS. MEAD: What was the use on the property at the
8 time of the master plan, if you know?

9 MR. PFETSCH: I do not know.

10 MS. MEAD: If I were to show you the master plan,
11 page 21 --

12 EXAMINER: Well, he said he didn't know. Are you
13 asking him what the master plan says? Because I already
14 know what the master plan says. So --

15 MR. PFETSCH: I think I -- I'll answer the
16 question she didn't ask.

17 MS. MEAD: I didn't finish asking it. Okay.

18 MP; The question is was the intent to
19 disestablish a grand fathered house, and the answer was no.
20 The answer was --

21 EXAMINER: Okay. Okay. Okay.

22 MS. MEAD: I'm going to have to object to him --

23 EXAMINER: This is cross-examination. So, you
24 just limit yourself to the answer. When she's finished
25 asking you questions, you too, just like the other

1 gentleman --

2 MR. LEIBOWITZ: Mr. Zepp.

3 MR. PFETSCH: Mr. Zepp.

4 EXAMINER: -- Mr. Zepp. I knew that name. You
5 can make those points. But, right now, you just have to
6 stick with the answer to her question. Okay? So, can you
7 repeat the question for him if you remember it?

8 MS. MEAD: I was going to ask it in a different
9 way.

10 EXAMINER: Okay. Well, that's good, too.

11 MS. MEAD: Do you consider encroachment to mean a
12 continuation of a nonresidential use on a property?

13 MR. PFETSCH: No. I would regard those, the
14 change, a future change. Not one that's already happened.

15 EXAMINER: Okay.

16 MR. PFETSCH: The intent, the master plan --

17 MS. MEAD: You answered my question.

18 EXAMINER: Yeah. You follow -- make a note to
19 yourself if you want to raise a point after she's done.

20 MR. PFETSCH: That's all right. I'm sorry.

21 MS. MEAD: If you know, is the applicant today
22 requesting to change the zoning on the property?

23 MR. PFETSCH: I don't know that.

24 MS. MEAD: Okay. Those are my questions.

25 EXAMINER: Okay. Mr. Leibowitz?

1 MR. LEIBOWITZ: Ms. Mead asked to put aside the
2 issue of whether or not it was immediately, that the subject
3 property was immediately adjacent to the commercial
4 district. I'm going to ask you to put that back. Based on
5 your work on the master plan and the assistance of the
6 advisory council is it your view that the subject property
7 is immediately adjacent to the commercial district?

8 MR. PFETSCH: Let me give you -- the answer is
9 legally it's not. There must be some intervening
10 properties. The question is is this, from our perspective
11 in terms of the context of the planning, is this document on
12 what -- is this property on one side of the line or is it on
13 the other side of the line? In this particular case, it's a
14 commercial property which is on the residential side of the
15 line. So, in terms of adjacent, that, to me it's not
16 relevant.

17 MR. LEIBOWITZ: But you're still concerned?

18 MR. PFETSCH: It's on the wrong side of the line.
19 Yes, sir.

20 EXAMINER: And where's the line?

21 MR. PFETSCH: In this particular case, it would be
22 at the Safeway.

23 EXAMINER: I see. Okay.

24 MR. PFETSCH: Because one side of the street is, I
25 believe it's Lorraine. Is that correct?

1 MR. LEIBOWITZ: Correct.

2 EXAMINER: Uh-huh.

3 MR. PFETSCH: One side of Safeway -- Lorraine is
4 the Safeway and the other side is purely residential houses.

5 MR. LEIBOWITZ: And so based on your work on the
6 master plan, it was the intent of the master plan to keep
7 the properties that were on the west side of Lorraine, for
8 lack of a better description --

9 MR. PFETSCH: Northwest side. Yes.

10 MR. LEIBOWITZ: -- residential?

11 MR. PFETSCH: Correct.

12 MR. LEIBOWITZ: You were asked about whether a
13 continuation of the property as a commercial use would be
14 okay, and you started answering about de-establishing the --

15 MR. PFETSCH: In the context of what it was at the
16 time of the master plan, it was a doctor's office, if I'm
17 not mistaken. So, to demolish it and to establish that it
18 as a business of a larger scale, is certainly not a
19 continuation.

20 MR. LEIBOWITZ: I have no further questions.

21 EXAMINER: Anything else you would like to say?
22 Thank you. And then do we have Ms. Quinn?

23

24 MS. MEAD: Yes.

25 MR. LEIBOWITZ: Yes.

1 EXAMINER: Ms. Quinn, I know you were here
2 before --

3 MS. QUINN: Yes.

4 EXAMINER: -- but I can't remember if I swore you
5 in or not.

6 MS. QUINN: No.

7 EXAMINER: So, out of an abundance of caution,
8 could you raise your right hand, please? Do you solemnly
9 affirm under penalties of perjury that the statements you're
10 about to make are the truth, the whole truth, and nothing
11 but the truth?

12 MS. QUINN: Yes. I do.

13 EXAMINER: Please state your name and address for
14 the record.

15 MS. QUINN: Harriet Quinn. 10419 Brookmoor Drive,
16 Silver Spring.

17 EXAMINER: Okay. And you are representing an
18 organization today. Correct? Or --

19 MS. QUINN: I am a resident of the
20 Woodmoor/Pinecrest neighborhood.

21 EXAMINER: Okay.

22 MS. QUINN: And former board member of the
23 association, current member of the executive committee and
24 also chair of the neighborhood traffic safety committee.

25 EXAMINER: Okay. So are you appearing on behalf

1 of the organization or testifying on your own?

2 MS. QUINN: I'm authorized to appear on behalf but
3 I'm not sure of the situation. I don't have counsel. So --

4 EXAMINER: Oh. You can testify on your own.

5 MS. QUINN: Okay.

6 EXAMINER: Yeah. You don't have to have counsel
7 to testify.

8 MS. QUINN: Right. But, can I represent the
9 association because I am authorized to do so but my
10 understanding was that I can't because --

11 EXAMINER: Well, I think what we said last time is
12 that you were going to have to file a pre-hearing statement.

13 MS. QUINN: Right.

14 EXAMINER: Did you do that?

15 MS. QUINN: I'm listed as a witness in the South
16 Four Corners pre-hearing statement.

17 He: Okay. But --

18 MS. QUINN: But not a separate statement. No.

19 EXAMINER: Okay. You would have had to have a
20 separate statement from the, is it the Woodmoor?

21 MS. QUINN: Yes. Pinecrest. Yeah

22 EXAMINER: Okay. So, today you can appear on your
23 own behalf.

24 MS. QUINN: Okay. I will do so.

25 EXAMINER: Okay.

1 MS. QUINN: And discuss my experience with the
2 association.

3 EXAMINER: Certainly.

4 MS. QUINN: If that's appropriate? Okay. Thank
5 you. As I said, I'm a resident of the Woodmoor/Pinecrest
6 neighborhood in Four Corners which is one of the three
7 neighborhoods in the Four Corners master plan that is
8 adjacent to the commercial areas which is, if you refer to
9 page 15 of the master plan, we are in the northeast corner
10 of Four Corners. Not part of the designated neighborhood
11 but we have a great interest in the case because, obviously,
12 we are adjacent to the commercial areas.

13 EXAMINER: Uh-huh.

14 MS. QUINN: I just want to clear up a few things,
15 and I hope this was done with the prior testimony but the
16 applicant keeps referring to the property as recommended for
17 commercial office space, and I'd like to refer to, first,
18 figure 11 in the master plan on 27 which shows the
19 residential areas, and the property is not marked as
20 commercial, and then on the following page in the
21 residential zoning plan on page 28. Again, it's still
22 marked residential. Additionally, in the commercial plan,
23 existing commercial zoning on page 33, it is not designated
24 as commercial. On page 34, the commercial zoning plan it is
25 not designated for commercial future use. It was, at the

1 time, as has been stated many times, a residential home
2 office, a home occupation for a dentist, and I believe
3 that's what's indicated on the zoning plan that the
4 applicant keeps referring to. They didn't distinguish
5 between the different types of density of offices on that
6 particular page.

7 Additionally, I just would like to emphasis that
8 this is an R60 zone. The houses are very close together.
9 We're also very close to -- some of the houses are close to
10 the commercial areas and that was one of the major concerns
11 when they developed a master plan, as has been stated by Mr.
12 Zepp and Mr. Pfetsch.

13 The problems that were discussed earlier with
14 parking and transportation, obviously, would have less
15 impact in an area such -- that's zoned say R200 or
16 commercial area. The operator that's designated as the
17 lessee for this building, their operations currently are
18 located in commercial areas in Burtonsville, I believe, is a
19 C2 zone and then in Prince George's County, their operations
20 are in other commercial areas.

21 In addition, the applicant has mentioned two other
22 childcare cases in this case but one is on a five acre site
23 in an R200 zone. The other is in a commercial zone on
24 several acres, and again, this is less than an acre, and
25 we'd like to emphasize that this is R60, and we're talking

1 about almost 100 people using the facility each day.

2 Over the years, we've had several applications for
3 special exceptions applied for, and it has been our
4 understanding since the 1996 master plan was put in place
5 that the interpretation of the master plan was that those
6 nonresidential uses, nonresidential special exceptions, in
7 areas that are adjacent to the commercial areas and other
8 areas that are along the main highways, that those were
9 specifically the areas that were being talked about as being
10 not appropriate for nonresidential special exceptions
11 because of the impact on the residents around that.

12 Mr. Boyd's memo from the first, Fred Boyd, who's a
13 planner involved in the original master plan development in
14 1996, testified at the first planning board hearing and has
15 a memo within the first staff report, page 19, that re-
16 affirms what's been said by Mr. Pfetsch and Mr. Zepp
17 regarding the intent of discouraging uses in this location.
18 He states from page 20 the word discourages shows the
19 dilemma faced by planners in considering land uses in these
20 areas. There were persuasive arguments in Four Corners for
21 having the master plan state clearly that special exception
22 uses in the areas adjacent to the commercial district can
23 pose the threat of encroachment into stable residential
24 neighborhoods and are, as a result, generally less desirable
25 than residential uses, and he goes on to say that evaluating

1 this petition in light of the guidelines compels planning
2 staff to note that the property is located in an area
3 considered by the plan to be adjacent to the commercial
4 district. So, that was the opinion of the staff that worked
5 on the master plan and testified at the hearing. He also
6 testified that that property was not recommended for
7 commercial use because that was brought up in the planning
8 board hearing as well. So, I just wanted to clarify the
9 record on that.

10 And then, as I mentioned, I've worked on the
11 community traffic committee for the last five years and have
12 been -- one more thing that I wanted to add is that also in
13 the, before I get to traffic, in the master plan there is a
14 specific area that's been designated as acceptable for
15 special exceptions and that is the area that is west side of
16 Colesville, south of University and before the Beltway, and
17 I just wanted to provide these photographs.

18 EXAMINER: You mean north of the Beltway, south of
19 University and north of the Beltway. Okay.

20 MS. QUINN: North of the Beltway, south of
21 University, on the west side of Colesville Road.

22 EXAMINER: Okay. And I need to mark those as an
23 exhibit if we're going to talk about it.

24 MS. QUINN: Okay.

25 EXAMINER: Does anyone have any objections?

1 MR. LEIBOWITZ: No.

2 EXAMINER: Ms. Mead?

3 MS. MEAD: It's not clear. It just says area
4 designated. It has photographs. They don't have --

5 EXAMINER: Can you be more specific, Ms. Quinn,
6 about what these photographs are of?

7 MS. QUINN: Well, these are photographs of a
8 location that is a former residence that is designated for
9 special exception.

10 EXAMINER: Okay. Can you identify where these
11 are?

12 MS. QUINN: Yes. This is located on Colesville
13 Road at the intersection with Lanark Way.

14 EXAMINER: Now, which one are you referring to?

15 MS. QUINN: Which photograph?

16 EXAMINER: Yeah. I'm going to mark this just for
17 the time being as Exhibit 149. Okay. So, let's take
18 picture by picture and you tell me what these pictures are
19 of. So, in the upper left corner.

20 MS. QUINN: In the upper left, well, can I start
21 with the upper right?

22 EXAMINER: Sure.

23 MS. QUINN: Just in terms of setting the context.
24 The upper right is the Four Corners Office Park which is
25 part of the commercial district in the C2 zone, page, if you

1 refer to page 33 of the master plan. It is the area south
2 of University and there is a designation there for CT for
3 commercial transition, and that's the office park.

4 EXAMINER: Okay.

5 MS. QUINN: Immediately adjacent to that is this
6 former residence.

7 EXAMINER: Now wait. Adjacent? Which way on this
8 picture?

9 MS. MEAD: And I had q question.

10 EXAMINER: Sure.

11 MS. MEAD: Is the Four Corners Office Park, is it
12 in the C2 or the CT?

13 MS. QUINN: CT.

14 EXAMINER: And that's the one in the -- I'm going
15 to mark that as A.

16 MS. QUINN: Okay.

17 EXAMINER: The one in the upper right corner.

18 Okay? And that is 139A. Okay. The Four Corners Office
19 Park. All right. Now, what's the next one? Where's the
20 next one you want to talk about?

21 MS. QUINN: Okay. The next one I'd like to talk
22 about is the lower left picture.

23 EXAMINER: Okay.

24 MS. QUINN: Which gives you perspective of --

25 EXAMINER: Lower left or lower right?

1 MS. QUINN: Lower left.

2 EXAMINER: Okay. I'm going to mark that as B.
3 And can you describe that?

4 MS. QUINN: Yeah. That gives you the perspective
5 of the residents that's designated as a special exception
6 which is adjacent to the commercial transition zone which is
7 where the Four Corners Office Park is located.

8 EXAMINER: Okay. And did you identify where that
9 is? I'm sorry.

10 MS. QUINN: I don't have the exact number in terms
11 of the address.

12 EXAMINER: Yeah. Can you give me just an idea of
13 where?

14 MS. QUINN: The location is Colesville Road and
15 Lanark Way.

16 EXAMINER: Okay.

17 MS. QUINN: I think, technically, it's located on
18 Lanark Way. I don't know the number.

19 EXAMINER: Okay.

20 MS. MEAD: Is it to the north or the south of
21 Lanark Way?

22 MS. QUINN: It is to the north of Lanark Way.

23 MR. LEIBOWITZ: I'm told by a good authority
24 that's 9912 Colesville Road.

25 EXAMINER: Well, okay. Well, We're going to just

1 stick with whoever's testifying. I appreciate the offer but
2 we're going to go with whoever's testifying. So, you're
3 saying it's north of the intersection of Colesville Road and
4 Lanark Way?

5 MS. QUINN: Yes. It's at the corner. The
6 northwest corner.

7 EXAMINER: Okay.

8 MS. QUINN: So, that would be B. And in the lower
9 right corner of the exhibit which will come to --

10 EXAMINER: C.

11 MS. QUINN: Is just a closer view of that
12 building, the one designated for special exception.

13 EXAMINER: Okay.

14 MS. QUINN: And in the upper left corner of the
15 exhibit --

16 MS. MEAD: Could I just ask a clarifying question?

17 EXAMINER: Yeah.

18 MS. MEAD: So sorry if it goes into -- but, when
19 you say designated as special exception, do you mean
20 designated in the master plan or approved as a special
21 exception?

22 MS. QUINN: Yes. Just to clarify. The master
23 plan designates this area as acceptable for special
24 exceptions.

25 EXAMINER: Okay.

1 MS. QUINN: It is very specific --

2 EXAMINER: Okay. All right.

3 MS. QUINN: -- in saying that an area, I'll find
4 the language, but an area appropriate for special
5 exceptions --

6 EXAMINER: Okay.

7 MS. QUINN: -- is this particular area west, page
8 26. In the third paragraph --

9 EXAMINER: Okay.

10 MS. QUINN: -- on page 26. Several single family
11 homes along the west side of Colesville Road between the
12 Beltway and University Boulevard have been converted to
13 office use by special exception. This location is suitable
14 for special exception office use.

15 EXAMINER: Okay.

16 MS. QUINN: So, I wanted to provide photographs.

17 EXAMINER: Okay. No. That's fine. Did we cover
18 the fourth photo here?

19 MS. QUINN: Is D.

20 EXAMINER: Yeah.

21 MS. QUINN: On the upper left.

22 EXAMINER: Yeah.

23 MS. QUINN: And that's just a close-up of the sign
24 in front of the building that we're discussing.

25 EXAMINER: Which building?

1 MS. QUINN: The special exception building for
2 professional offices.

3 EXAMINER: Oh. Okay. The one --

4 MS. QUINN: The one located in C.

5 EXAMINER: Okay.

6 MS. QUINN: At the corner of Lanark Way and
7 Colesville Road.

8 EXAMINER: Okay. So, I'm going to call this --
9 I'm just going to call it area designated for special
10 exceptions. Okay?

11 MR. LEIBOWITZ: Is it clear to everyone what the
12 pictures are of or can I ask a clarifying question if it's
13 not clear?

14 MS. QUINN: Well, I did want to explain the photo
15 in the upper left a little bit more.

16 EXAMINER: Okay. But, first I need to know do you
17 have another --

18 MS. MEAD: I would object to the word designation
19 as far as how they're described.

20 EXAMINER: How about area of special exceptions?

21 MS. MEAD: Okay.

22 EXAMINER: How's that?

23 MS. MEAD: Okay.

24 MS. QUINN: Areas recommended for special
25 exception.

1 EXAMINER: No. No. No. No.

2 MS. MEAD: Well, I would disagree.

3 EXAMINER: Just for the name of the exhibit.

4 MS. QUINN: Oh. Okay.

5 EXAMINER: We'll argue about the rest later.

6 Okay? All we're going to do is call it area of special
7 exceptions. Okay?

8 MS. QUINN: Okay.

9 EXAMINER: It's Exhibit 149.

10 MR. LEIBOWITZ: And everyone's clear what the
11 photographs are of and where they are?

12 EXAMINER: Well, if Ms. Mead isn't, let her bring
13 that out and we'll proceed. What I understand is A is the
14 Four Corners Office Park which is zoned CT according to Ms.
15 Quinn. Correct?

16 MS. QUINN: Yes.

17 EXAMINER: B is the northwest corner of Colesville
18 Road and Lanark Way. Is that correct?

19 MS. QUINN: Yes. And adjacent to the CT picture
20 and --

21 EXAMINER: Yes. I see the CT in there.

22 MS. QUINN: Yeah. Okay.

23 EXAMINER: C is a closer view of that home on the
24 or that structure on the same intersection and D is a close-
25 up of the sign for A which is the office park. Is that

1 correct? No.

2 MS. QUINN: A close-up of the sign for C.

3 EXAMINER: A close-up of the sign for C. Okay. I
4 stand corrected. Okay.

5 MS. QUINN: And the sign indicates --

6 EXAMINER: Now, before you continue testifying,
7 Ms. Mead, do you have any objections to this coming in?

8 MS. MEAD: No. Since we changed what the title
9 is. No.

10 EXAMINER: Okay.

11 MS. MEAD: No objections.

12 EXAMINER: Okay. Now you can continue.

13 MS. QUINN: Thank you. So, in picture D, the sign
14 is a for lease sign for -- it says attorneys, therapists,
15 CPAs, architects, and dentists. So, this is an example of a
16 building that has been stated in the master plan as an area
17 suitable for special exceptions for professional offices.

18 EXAMINER: Okay.

19 MS. QUINN: And, I'd like to add that that sign
20 has been on that property for over a year, maybe two years.

21 EXAMINER: Okay.

22 MS. QUINN: So, as I mentioned, I've been a member
23 of the communities traffic safety committee for five years
24 and chair for the last three and have been involved with
25 meetings, discussions, conversations with various government

1 officials including the State Highway Administration,
2 Montgomery County Department of Transportation as well as
3 transportation planners at Montgomery County planning
4 department. So, I'd like to provide a group of items that
5 contain government documents related to traffic counts,
6 mobility reports, and previous traffic studies that have
7 been done in the Four Corners area.

8 EXAMINER: Okay. Do you have a copy for --

9 MS. QUINN: Yeah. That's what I was going to ask
10 you, and --

11 EXAMINER: Okay.

12 MS. QUINN: And if I could go through, I won't
13 take a lot of time, but just go through to point out certain
14 things about previous studies in the Four Corners area that
15 show that adequate -- we do not believe that the roads in
16 our area are operating in an adequate level of service,
17 and --

18 EXAMINER: Okay. I understand what you're going
19 to do. Before you do that, I need to mark this as Exhibit
20 150, and these are traffic reports, generically termed.

21 MS. QUINN: Yes. I would say they are traffic
22 information and --

23 EXAMINER: No. Just traffic reports. That's
24 fine.

25 MS. QUINN: There's also pedestrian safety

1 information in there as well.

2 EXAMINER: Traffic related reports.

3 MS. QUINN: Yes.

4 EXAMINER: How's that? Okay. Ms. Mead, have you
5 had a chance to review this or --

6 MS. MEAD: No.

7 EXAMINER: Do you want to take a few minutes or --

8 MS. MEAD: Since I'm not sure, page 16 on, is it
9 part of the mobility? Is it part of the same report?

10 MS. QUINN: These are all -- I would much rather
11 ask to go through each page one by one. They are excerpts
12 from different reports.

13 EXAMINER: Okay. What I'm going to do then is you
14 identify which is the first report. You tell us about it,
15 and I'll mark it 150A. Okay?

16 MS. QUINN: Okay.

17 EXAMINER: So, what's the first report?

18 MS. QUINN: The first report is the mobility
19 assessment report from October 2011 --

20 EXAMINER: All right.

21 MS. QUINN: -- produced by the Montgomery County
22 planning department.

23 EXAMINER: And how many pages of this document
24 that you went through -- when does that report end?

25 MS. QUINN: On this exhibit?

1 EXAMINER: Yeah.

2 MS. QUINN: Okay.

3 MS. MEAD: And they appear to just be excerpts of
4 it?

5 MS. QUINN: Yes. This would be through circled
6 number 9, circle page 9.

7 EXAMINER: So, circle 1 to circle 9 is 150A.
8 Okay. And then beginning on 10. What is 10?

9 MS. QUINN: Ten is the 2009 highway mobility
10 report, June 2009.

11 EXAMINER: So, this is 150B; and is it excerpts,
12 or is it the entire report?

13 MS. QUINN: Excerpts.

14 EXAMINER: Excerpts from highway mobility. What
15 year?

16 MS. QUINN: 2009.

17 EXAMINER: Of 2009.

18 MS. QUINN: And that would be circle 10 through
19 circle 15.

20 EXAMINER: Okay.

21 MS. QUINN: I'm sorry. Circle 14.

22 EXAMINER: Okay. All right. And so now we're at
23 circle 15.

24 MS. QUINN: Circle 15 is communication and
25 community discussion paper to the Woodmoor/Pinecrest

1 Association regarding a study that we have ongoing with the
2 Montgomery County Department of Transportation.

3 EXAMINER: Okay. Just for the purposes of
4 identifying it --

5 MS. QUINN: Uh-huh.

6 EXAMINER: I'm just going to call it -- it'll be
7 Exhibit 150C which is the Woodmoor/Pinecrest community
8 discussion paper. Is it the entire paper or is it just
9 excerpts?

10 MS. QUINN: It is excerpts.

11 EXAMINER: Excerpts. So, it's excerpts from the
12 Woodmoor/Pinecrest community discussion paper.

13 MS. QUINN: And that would be circle 15 through
14 circle 20.

15 EXAMINER: And then what do we have?

16 MS. QUINN: Then we have a portion of a staff
17 report, transportation staff report, dated March 3, 2006.

18 EXAMINER: Excerpts again?

19 MS. QUINN: Excerpts.

20 EXAMINER: Okay.

21 MS. QUINN: The only reason I included excerpts
22 was just to save paper.

23 EXAMINER: Yeah. Yeah.

24 MS. QUINN: I'd be happy to provide the full
25 reports if anybody needs them.

1 MS. MEAD: Well, I'm just questioning the
2 relevance of the 2006 traffic study for a different use
3 other than outside the defined neighborhood --

4 EXAMINER: Okay. Let me do this.

5 MS. MEAD: -- and then the next one looks like a
6 1992 --

7 EXAMINER: Okay.

8 MS. QUINN: I haven't been able to talk yet
9 about --

10 EXAMINER: Okay. Hold on a second. Hold on a
11 second. Let me get them marked for identification first.
12 Okay. So, Exhibit 150D is a 03-03-2006, excerpts from a 03-
13 03-2006 memo from transportation planning. Okay. Now,
14 let's just get through what else is in here.

15 MS. QUINN: And that's circle 21 through 22.

16 EXAMINER: Okay. Okay. So, now we're on 23.

17 MS. QUINN: Circle 23 is the backup information
18 from the traffic engineering group.

19 EXAMINER: Backup information for what?

20 MS. QUINN: For the planning memo in 150D.

21 EXAMINER: Okay. So, is this all the backup
22 information or part of the backup?

23 MS. QUINN: No. Just part of it. Just to show
24 the number.

25 EXAMINER: So, it's excerpts. So, it'll be

1 excerpts from traffic data related to 150B.

2 MS. QUINN: Yes.

3 EXAMINER: Okay. Now, let's go to the next one.

4 MS. QUINN: The next one is circle 24 through 27
5 is excerpts from traffic impact study for the new Montgomery
6 Blair High School.

7 EXAMINER: Okay. So, that'll be 150F is excerpts
8 from the K-track traffic study.

9 MS. QUINN: Yes.

10 EXAMINER: Okay. Now, what's the next one?

11 MS. QUINN: Okay. The next circle 28 through 32--

12 EXAMINER: Okay.

13 MS. QUINN: -- are State Highway Administration
14 volume counts.

15 EXAMINER: Okay. 150G is SHA volume counts.

16 MS. MEAD: Are they all from the same date or?

17 MS. QUINN: No.

18 EXAMINER: They're just different --

19 MS. QUINN: Different locations. Different dates.

20 EXAMINER: And that goes through what circle?

21 MS. QUINN: That goes through circle 32.

22 EXAMINER: Okay. And then circle 33 is?

23 MS. QUINN: Is photographs of existing traffic
24 conditions in the Four Corners area.

25 EXAMINER: Okay.

1 MS. QUINN: And that's 33 through 39.

2 EXAMINER: So, that would be -- hold on. 150H.
3 150H photos of existing traffic or photos of traffic
4 conditions.

5 MS. QUINN: Conditions.

6 EXAMINER: Okay. Take us to your next.

7 MS. QUINN: Circle 40 is an email from the
8 Montgomery County Police Department with accident statistics
9 in the area.

10 EXAMINER: Okay. Which circle is that on?

11 MS. QUINN: I'm sorry. Circle 40.

12 EXAMINER: 40. Okay. So, 40 will be Exhibit
13 150I. 5-23-11 email from Robert Morrow. Okay. And your
14 next one?

15 MS. QUINN: Circle 41 through 49 are excerpts from
16 Montgomery County pedestrian road safety audit, University
17 Boulevard and Colesville Road, July 2011.

18 EXAMINER: Okay. So, this will be J. Excerpts
19 from pedestrian road safety audit. Okay. And the next one.

20 MS. QUINN: 50 is just a news article regarding a
21 pedestrian accident at Four Corners.

22 EXAMINER: Okay. Exhibit 150K. Silver Spring
23 Patch news article. Okay. And then is there --

24 MS. QUINN: And then lastly, 51 through 55 is
25 correspondence, emails, between State Highway Administration

1 and the Woodmoor/Pinecrest Citizens Association.

2 EXAMINER: Okay. Emails between SHA and
3 Woodmoor/Pinecrest Citizens Association. Okay. All right.
4 So, we have them all marked. I think Ms. Mead has some
5 questions on how they're relevant. So, I'm going to -- they
6 aren't admitted yet. They're only identified for the
7 record.

8 MS. QUINN: Okay. All right.

9 EXAMINER: Ms. Mead, do you want to ask your
10 questions about these exhibits? Do you want to take a break
11 and get a chance to review the exhibits?

12 MS. MEAD: Well, for the majority of them, we
13 question how they're germane to the case and relevant with
14 the record.

15 EXAMINER: Okay. I have to have each one, you
16 know, that brought out for each exhibit so I can rule on the
17 particular exhibit. So, if you want to start with 150A, you
18 can ask her as to relevance. If you need time to look it
19 over, I mean, we can take a five or 10 minute break or we
20 can proceed. It's up to you.

21 MS. MEAD: It might be easier to take a 10 minute
22 break just so we can --

23 EXAMINER: Okay.

24 MS. MEAD: -- go through them quicker.

25 EXAMINER: So, we're going to go off the record,

1 and we'll be back at 4:10. Yes. 4:10. Or, I'm sorry.
2 Five minutes after 4:00. All right? Thank you. According
3 to that clock.

4 (OFF THE RECORD)

5 (ON THE RECORD)

6 EXAMINER: We're back on the record. Did you have
7 a chance to review the exhibits?

8 MS. MEAD: Yes. I did.

9 EXAMINER: Okay.

10 MS. MEAD: And we can go through them one by one
11 as far as our objections to them.

12 EXAMINER: Are you objecting to all of them?

13 MS. MEAD: No. Some that we can just handle on
14 cross-examination.

15 EXAMINER: Okay. All right. Before we start
16 that, I don't know how late -- how many more witnesses? Is
17 there anyone else besides Ms. Quinn that wants to testify
18 tonight?

19 MR. LEIBOWITZ: I don't think so. I think she'd
20 be the last witness in opposition to the application.

21 EXAMINER: Okay. And then do you have rebuttal?

22 MS. MEAD: Yes.

23 EXAMINER: I guess, you don't know because you
24 haven't heard Ms. Quinn's also. You will have rebuttal.

25 MS. MEAD: We had rebuttal from the last hearing

1 and from earlier today.

2 EXAMINER: Let's see how far we get. I do have
3 two more hearing dates. So, think about these, 12-15-11 and
4 2-13-12. So, I'm throwing those out there, and we'll
5 continue. Ms. Mead, do you want to go begin on the Exhibits
6 150, A through whatever the last one was. Go ahead.

7 MS. MEAD: A, we would object to the -- it appears
8 to be a study on intersections that vary year to year as far
9 as rankings of intersections. So, we would object to the
10 relevance and based on the various amounts of years and --

11 EXAMINER: What do you mean vary from year to
12 year?

13 MS. MEAD: On circle 44 it has --

14 EXAMINER: I see.

15 MS. MEAD: -- 2008, 2009, 2011. Not indicating
16 the source of the information and then it varies on the -- I
17 guess it has 2008, 2009, 2011 again on circle 5.

18 EXAMINER: Okay. Well, let's take one at a time.
19 150A.

20 MR. LEIBOWITZ: If I can just address this
21 briefly. This exhibit's already been admitted in its
22 entirety as Exhibit 72.

23 MS. QUINN: Well, actually, the 2009 one was. So,
24 it's Exhibit 72 in evidence already.

25 EXAMINER: Okay.

1 MS. QUINN: The 2009 report. The 2011 report is
2 not in evidence. It just came out in July.

3 EXAMINER: Okay. But, I would like you to address
4 because I don't understand the relevance either.

5 MS. QUINN: Okay.

6 EXAMINER: So, if you would be so kind as to
7 address Ms. Mead's question and tell us what this report
8 is --

9 MS. QUINN: Sure.

10 EXAMINER: -- and why it's relevant to this
11 proceeding.

12 MS. QUINN: Well, in terms of overall what we're
13 showing here is, historically, the Four Corners area has
14 been a highly congested operating at maximum and over
15 capacity. There's a lack of capacity for automobiles at
16 these intersections. These numbers show, in each of these
17 reports which are produced every two years by the park and
18 planning commission, show the critical lane volumes at the
19 relevant intersections that have been studied in this case,
20 and they conflict. The numbers conflict with what's shown
21 in the current study or in the applicant's traffic study,
22 the critical lane volume.

23 EXAMINER: Okay. So, you're saying that the
24 intersections are listed in here that are also contained in
25 the applicant's traffic impact study.

1 MS. QUINN: Specifically the Four Corners
2 intersection.

3 EXAMINER: Okay.

4 MS. QUINN: Which was one of the intersections
5 they were directed to study --

6 EXAMINER: Okay.

7 MS. QUINN: -- by the planning staff.

8 EXAMINER: Okay.

9 MS. QUINN: Transportation staff.

10 MS. MEAD: Does it clarify which movement of that
11 intersection?

12 MS. QUINN: It clarifies that the intersection,
13 for instance, on circle 4, 19 intersection, Colesville Road
14 at University Boulevard, the southern leg, there are two
15 legs.

16 EXAMINER: What circle page are you on?

17 MS. QUINN: I'm sorry. Circle 4.

18 EXAMINER: Oh. Okay. Go ahead. Okay.

19 MS. QUINN: Nineteen, intersection name,
20 Colesville Road at University Boulevard as which signifies
21 the southern portion which is the exact intersection that
22 the applicant has in their traffic study, and we're showing
23 that the critical lane volume exceeds the LATR standard in
24 this mobility report and in previous mobility reports, and
25 other traffic studies.

1 EXAMINER: Okay.

2 MS. MEAD: Our point of the relevance is that one
3 particular count date, which was not done for this special
4 exception, is not in part for the record that the planning
5 staff looked at for this case.

6 EXAMINER: Okay. Well, I think that it -- I think
7 she has met a threshold standard of relevance. I think
8 that's a matter for cross-examination to clarify. All
9 right. So, I'm going to admit 150A.

10 MS. QUINN: Ma'am, may I say one more thing?

11 EXAMINER: Sure. Sure.

12 MS. QUINN: My point here is that we're trying to
13 show the conditions on the ground. In Four Corners, we
14 don't think that the applicant's traffic study reflects
15 that, and this shows a history of congestion at that
16 intersection that does not meet the standard for a new
17 development.

18 EXAMINER: Okay.

19 MS. QUINN: So, that's where we're going.

20 EXAMINER: I understand, and I've said there may
21 be some -- it may be relevant. The applicant can bring up
22 any inaccuracies or why it shouldn't affect the application
23 on cross-examination. So, all we're doing now is going
24 through and admitting these.

25 MS. QUINN: Right.

1 EXAMINER: And then you're going to get to
2 testify --

3 MS. QUINN: Okay.

4 EXAMINER: -- about whatever ones are admitted.

5 MS. QUINN: Right.

6 EXAMINER: Okay?

7 MS. QUINN: Right.

8 EXAMINER: So, that one's admitted. Okay. So,
9 let's go to 150B. Can you describe why this is relevant?
10 I'm sorry, Ms. Mead.

11 MS. MEAD: Same objection. It's from a same,
12 appears to be, from a mobility report of park and planning
13 ranking intersections which appears to vary from year to
14 year, and it's done from the same count as the first
15 exhibit.

16 EXAMINER: Is this the excerpts from what is
17 Exhibit 72?

18 MS. QUINN: Yes. It is, and there was no
19 objection when it was entered at that time.

20 EXAMINER: Okay. Is it the same relevant? Is it
21 introduced for the same reason that it lists certain
22 intersections that the applicant was required to study?

23 MS. QUINN: Well, the relevance is it's showing
24 the critical lane volume over a period of time. First we
25 saw 2011. This is the 2009 report.

1 EXAMINER: Okay. Well, I'm just asking you is
2 there an intersection in this report?

3 MS. QUINN: Yes.

4 EXAMINER: I see that -- okay.

5 MS. QUINN: Number 21, circle 11.

6 EXAMINER: Okay. So, I will go ahead and admit
7 this.

8 MS. QUINN: And if I might also add it shows other
9 intersections along the Colesville Road.

10 EXAMINER: Okay. It's admitted. You'll get a
11 chance to testify.

12 MS. QUINN: Okay. Thank you.

13 EXAMINER: Okay? Now, the next one is 150C. Did
14 I skip a number?

15 MS. MEAD: No. We're on 150C. This appears --

16 EXAMINER: Can you tell me which circle that is?

17 MS. MEAD: Circle 16 through 20.

18 EXAMINER: Oh. Okay. Thank you.

19 MS. MEAD: Well, 15.

20 EXAMINER: Or 15.

21 MS. QUINN: It starts at 15.

22 EXAMINER: That's it. Yes. Thank you. And what
23 is your objection, Ms. Mead?

24 MS. MEAD: Again, just the relevance. It's a
25 community discussion paper. It doesn't have any information

1 as far as when any traffic counts were taken or for their
2 tables that the witness has circled.

3 EXAMINER: Okay. Do you want to respond?

4 MS. QUINN: This is part of an ongoing traffic
5 study that we have with the county regarding cut through
6 traffic as a result of the congestion in the Four Corners
7 intersection. This report was transmitted to us on
8 September 26th of this year. I only provided the first few
9 pages to provide a context for you where this is coming
10 from. Circle 20 shows the full intersection critical lane
11 volumes. The applicant's traffic study only shows critical
12 lane volumes for one portion of the Four Corners
13 intersection. This shows both legs of University at the
14 intersection with Colesville Road.

15 EXAMINER: Was there a reason that -- usually the
16 applicant studies intersections at the direction of
17 technical staff. Was there a reason that one leg was not
18 included?

19 MS. QUINN: Well that's a good question because we
20 have been trying to get the justification for the scope and
21 why it only included one portion of the study, and I was
22 informed that they would provide that if you directed them
23 to, that they were not inclined to provide that.

24 MR. LEIBOWITZ: They meaning technical staff?

25 MS. QUINN: Transportation staff.

1 MS. MEAD: And I'll note that the first staff
2 report in the record notes the communities objections to the
3 intersections and explains that they were satisfactory with
4 the ones that they directed Mr. Starkey to analyze.

5 MS. QUINN: It did not provide the justification
6 from the LATR which directs them to measure traffic in both
7 directions at the intersection. So, it did not provide the
8 justification for that reason. We were told, actually, that
9 the person is no longer with the agency and that they --
10 that was it. So --

11 EXAMINER: Well --

12 MS. QUINN: He wouldn't provide in writing why but
13 he said he would if he was directed to by the hearing
14 examiner. So, I'm just showing a recent document that
15 shows --

16 EXAMINER: Okay. Okay. Back up one second.
17 Okay? All right. You have the right to be able to cross-
18 examine a witness, you know, based on the documentation in
19 the case.

20 MS. QUINN: Right.

21 EXAMINER: You have the ability to request or
22 subpoena but we usually don't subpoena government witnesses.
23 We just request them to attend. So, I guess my question is
24 are you requesting me to have him come and provide that
25 justification?

1 MS. QUINN: Or in writing when the applicant's
2 traffic engineer was asked the question about the scope, he
3 said because that was the scope he was provided by the
4 planning staff.

5 EXAMINER: Okay. But, are you asking me to ask
6 the transportation planning staff to come in and provide the
7 justification?

8 MS. QUINN: Well, we just asked for it in writing.
9 We didn't ask for them to necessarily have to come but we
10 just asked for the section in the LATR which justifies why
11 only one portion of the intersection was scoped. So, if you
12 find it --

13 EXAMINER: Well, Mr. Leibowitz, are you going to
14 -- what's your position on that?

15 MS. MEAD: The staff report back from the original
16 application noted that the traffic study was prepared on the
17 scope -- clarified staff consistent with LATR/PAMR
18 guidelines and it required with those guidelines and the
19 scope was provided by the staff. Now, we're at the
20 continued hearing and we're now asking for staff to come in
21 and that was on the 120 children and more staff at the
22 special exception.

23 EXAMINER: But, her question isn't that staff
24 provided it. It's still her case in chief. So, I mean, the
25 opposition case in chief.

1 MS. MEAD: Right.

2 EXAMINER: So, why didn't staff give you the
3 justification?

4 MS. QUINN: They said that -- this is interesting.
5 They said that since the hearing was in progress, they did
6 not want to provide something without the direction from the
7 hearing examiner to do so. So, I can provide you with the
8 email request --

9 EXAMINER: Mr. Leibowitz, do you want to say
10 anything?

11 MR. LEIBOWITZ: Weigh in on this issue?

12 EXAMINER: Yeah.

13 MR. LEIBOWITZ: We had discussed, Ms. Quinn and I
14 had discussed earlier that they hadn't studied the whole
15 intersection and she, for client budgetary reasons, spent a
16 lot of, you know, citizen efforts to get things
17 accomplished, and she had taken the lead on getting this
18 information, and you've heard her --

19 EXAMINER: Well, if I ask them for the
20 justification, are you going to waive cross-examination on a
21 written submission?

22 MR. LEIBOWITZ: I guess it depends on what it
23 says.

24 EXAMINER: That means you're not waiving. So --

25 MS. MEAD: Our position is that the staff has

1 clarified that it's consistent with the LATR/PAMR
2 guidelines. We can certainly admit those in the record. We
3 can certainly -- if our expert didn't already explain why
4 the scope was the way it was based on our trip generation
5 then what the guidelines state.

6 EXAMINER: Right. Well, I guess tracking this
7 through, your witness testified that's the parameters of
8 what he was given. But that doesn't answer the question as
9 to why he was given -- her question is the justification of
10 why he was given those parameters.

11 MS. MEAD: My witness also has the expertise as
12 far as the LATR guidelines as far as what their parameters
13 are in mind that was the scope provided.

14 EXAMINER: And does Mr. Starkey's testimony
15 satisfy you or do you wish to --

16 MS. QUINN: I believe Mr. Starkey was asked the
17 question and stated that that was the scope he was given by
18 staff.

19 EXAMINER: Well --

20 MS. QUINN: We asked staff this several times, and
21 we even recently, when we found out that there was going to
22 be an additional staff report prior to the issuance of a
23 staff report, the third iteration, we requested a meeting
24 with staff, and we have not been responded to. So, I'm just
25 -- I'm referring to circle 20 because it shows critical lane

1 volumes in both directions which his study does not.

2 EXAMINER: Okay. Okay. She does have the right
3 to cross-examine. For use -- okay. What I could do is
4 this. I can send him a request for the justification, and
5 if he wants to provide it in writing -- I don't want another
6 hearing. So, I guess my question is I can request the
7 person to come and then we resolve any issues in cross-
8 examination. What I don't want to do is have two more
9 hearings. We may have to squee through with one more
10 short hearing.

11 MS. MEAD: I would respectfully request that it be
12 limited to the question on the PAMR/LATR guidelines if
13 that's their question. I don't want to have -- we weren't
14 able to request staff to come when we've requested. They
15 would just --

16 EXAMINER: Well, let's do this. Let's get the
17 full scope of what she's going to testify to.

18 MS. MEAD: Okay.

19 EXAMINER: And then we'll decide. Okay?

20 MR. LEIBOWITZ: The way we're headed today, we may
21 be headed towards another hearing regardless of this issue.

22 EXAMINER: Well, if there's -- that's true. But,
23 if there's another hearing, it's going to be a short
24 hearing. Very short hearing. I mean, all I can -- well,
25 there's a couple of things. I really am concerned, you

1 know, and I don't interpret this one way or the other as far
2 as my decision on the case. I am very concerned about the
3 traffic and the parking on the street and how that's going
4 to be managed and the operations, you know, and I would like
5 to know or feel comfortable that the operator -- if this
6 does get granted, I just want to feel comfortable that that
7 transportation management plan and what the operations you
8 testified to is what they are so we can say okay. I do
9 think that this will work.

10 MS. MEAD: And I can submit as far as the whole
11 issue with staff that in my rebuttal witnesses questions, I
12 think we may be able to respond to the LATR/PAMR guidelines
13 as far as --

14 EXAMINER: Well, but see, she has a right to ask
15 from -- she's submitted a request to staff for the
16 justification. She has a right to ask staff as opposed to
17 your witness.

18 MS. MEAD: And we were not copied on that request.

19 EXAMINER: Well, I wasn't either. You know, this
20 is news to me. So, I'm just saying. So, and apparently
21 staff is saying to you they aren't going to do it unless I
22 request it. You have the right to request that. So, I will
23 request him, if you wish, to provide the justification. I'm
24 just trying to manage this so that we can get as much done
25 tonight and then if we have to have another date, it can be

1 limited to just the questions on the operations and the
2 storm water management and then this traffic study.
3 Whatever I end up requesting as far as technical staff, it
4 will be limited solely to that request. Okay? It's not
5 going to be a fishing expedition as far as getting more
6 holes in the thing. Okay? So, let's go through --

7 MS. MEAD: Okay. Well, that was the objection to
8 that one. I mean, you know, I apologize for being tedious.

9 EXAMINER: I understand what you're saying. You
10 were --

11 MS. MEAD: But, since this is being presented as
12 evidence this way, I'm sorry to go through each one one by
13 one.

14 EXAMINER: I understand. I understand. And I
15 understand totally.

16 MS. MEAD: The next one is -- so that one was 150C
17 which was the Woodmoor/Pinecrest community discussion paper
18 excerpts which, again, we objected to the --

19 EXAMINER: I don't understand what the relevance
20 of the Pinecrest community discussion paper excerpts are.

21 MS. QUINN: Again, it shows critical lane volumes
22 for the intersection that make it a failing intersection in
23 both directions. That's circle 20.

24 EXAMINER: Is that Exhibit --

25 MS. QUINN: The initial part is just to give you a

1 context of where this is coming from. It's an ongoing study
2 with the Department of Transportation regarding cut through
3 traffic through our neighborhood that comes through the
4 neighborhood to avoid the Four Corners intersection and they
5 have studied these intersections listed on circle 20, two of
6 which are at US 29 and 193 eastbound and westbound which is
7 why I brought up the issue of the request for why the scope
8 was done the way it was.

9 EXAMINER: Right. Okay. All right.

10 MS. QUINN: Because Ms. Mead is objecting to
11 having this in evidence but it clearly shows a different
12 condition --

13 EXAMINER: Okay. Okay.

14 MS. QUINN: -- level of service after the
15 intersection.

16 MS. MEAD: But, we don't have whoever prepared
17 this as far as when these counts were taken but we'll get
18 them from --

19 MS. QUINN: I got you. I totally got you.

20 MS. MEAD: Okay.

21 MS. QUINN: You have an expert, I'm sure, who will
22 explain it all. Okay. So, we're at --

23 MS. QUINN: It was prepared by the Montgomery
24 County Department of Transportation.

25 EXAMINER: Okay.

1 MS. QUINN: All of this information is government
2 generated.

3 EXAMINER: Generated. We're not attacking the
4 quality of the information. Okay?

5 MS. MEAD: I'm stumped.

6 EXAMINER: And we're not attaching you. I'm
7 trying to manage this so it doesn't -- okay.

8 MS. QUINN: Yes. I'm just trying to answer to the
9 objections.

10 EXAMINER: I understand.

11 MR. LEIBOWITZ: And if it would be more useful to
12 have the complete document --

13 EXAMINER: I think we're going to need the -- I
14 don't think it's fair to -- I know you were trying to save
15 paper and that's fine. I think we need the whole document
16 if we're going to do this. Okay?

17 MS. QUINN: Uh-huh.

18 EXAMINER: How about 150D?

19 MS. MEAD: 150D appears to be a planning staff
20 report from March 3, 2006 for a subdivision for a bank that
21 is not -- which doesn't have the same intersections as this
22 use, and again, it's over five years old. I guess that's
23 the excerpts from the staff report.

24 EXAMINER: The data.

25 MS. MEAD: And I guess there's other ones circled

1 for other reasons but it doesn't have the same intersections
2 as our proposed use and, again, it's for a different use
3 from five years ago, and if this report was from March 2006,
4 we're assuming the counts, although it doesn't state when
5 they were taken on the excerpts, we'll assume they're even
6 older than the actual report.

7 MS. QUINN: Again, this shows the critical lane
8 volumes up Colesville Road and University Boulevard
9 westbound which was not included in the applicant's traffic
10 study which is one of the questions we've raised. The use
11 has nothing to do with it. These are critical lane volumes
12 at the Four Corners intersection.

13 EXAMINER: Okay.

14 MS. MEAD: And again, our objection is it wasn't
15 an intersection that was in our study and we don't when
16 these counts are from. We don't know what road improvements
17 were done since --

18 MS. QUINN: The count is dated on circle 23, 10-
19 10-2005. We recognize that it is, you know, several years
20 old but what we're showing here is a historical pattern of a
21 failed intersection at Four Corners in both directions.

22 EXAMINER: Okay. Okay. You're showing a trend.

23 MS. QUINN: Showing a trend. Yes.

24 EXAMINER: You know, I tend to agree. I'll let it
25 in for the weight it deserves but I do tend to agree with

1 Ms. Mead on this one that, you know, it's so old. I guess
2 you have the historical count in the other one but this
3 one's years ago, and it's higher. Isn't it higher than what
4 was there before? I mean what's there currently. Isn't the
5 1917 higher than the 1680s?

6 MS. QUINN: Yes. But it's way over.

7 EXAMINER: Okay. All right. I'll let it in for
8 the weight it deserves, and it's subject to cross-
9 examination on that basis. Okay. 150 --

10 MS. MEAD: F is the same objection as far as the
11 relevance and the date. This is from 1992 for the school
12 site.

13 EXAMINER: Is this also to show the --

14 MS. QUINN: To show the trend that back before the
15 improvements were made at the Four Corners intersection that
16 the critical lane volumes were showing, again, a level of
17 service of F and that projected, with the improvements, it
18 would still show a level of service of F at the intersection
19 that was studied by the applicant and also at the westbound
20 leg as well which shows --

21 EXAMINER: Is this before the jug handle was put
22 in?

23 MS. QUINN: This is before the jug handle and then
24 showing projections for what would be after the jug handle
25 that it wouldn't make the intersection a passive

1 intersection, if you will. It would still be failing after
2 the improvements, and indeed, it is.

3 EXAMINER: Yeah. This one, I think, is a little
4 too attenuated to be relevant to -- because A, it was in
5 1992, and it was simply a forecast and the improvements are
6 completely, I mean, they're installed. I think this one is
7 just a little too far afield to have relevance to this
8 case. Okay? So, I am going to sustain Ms. Mead's objection
9 to this one. All right. So, that one is not admitted. So,
10 when you testify, that means you don't mention this. Okay?

11 MS. QUINN: Okay.

12 EXAMINER: If you can remember to do that.

13 MS. QUINN: Uh-huh.

14 EXAMINER: How about G?

15 MS. MEAD: I think to G which appears to be ramp
16 counts to 495, the Beltway, which is not in our scope of our
17 traffic setting. 28 through 32 all seem to be 495 ramp
18 counts.

19 MS. QUINN: And again, this is regarding a
20 discussion about the conditions in the Four Corners area and
21 one of the reasons that the intersection has consistently
22 been failing since before 1992 is the entrance to the
23 westbound 495 and this is just -- I just wanted to show that
24 these are all counts for all of the southbound corridor
25 entrances to 495 west and that the entrance from Colesville

1 Road is double that of any other entrance to westbound 495.
2 So, all along the Beltway from New Hampshire to Old
3 Georgetown Road, the Colesville Road entrance has double the
4 volume of any other, 16,530 cars daily.

5 EXAMINER: Okay.

6 MS. QUINN: And I just wanted to show along with
7 the pictures what's going on in Four Corners and that the
8 roads are not operating at an acceptable level of service
9 and this is one of the reasons why. So, that's why this is
10 in here.

11 MS. MEAD: And we would object because the other
12 -- the relevance as far as what this intersection, this ramp
13 to the Beltway is compared to other ramps outside the
14 Beltway, we don't know the width of those roads or the
15 volumes of those roads or the uses or zoning. So, just the
16 relevance of -- we don't dispute that Colesville hits the
17 Beltway.

18 EXAMINER: I understand. It's just to show the
19 hearing examiner what the conditions are in the area. I'll
20 let it in for the weight it deserves. But, I will say that
21 I'm governed by the local area transportation review and
22 PAMR guidelines. So, generalized traffic in the area is not
23 one of the criteria. If you think that you can tie it in in
24 someway, I'll give you some leeway to do that but we're
25 pretty much tied by the statute to LATR and PAMR and then,

1 you know, there's cases saying local circulation is an
2 element of compatibility. So, I'll let it in but I'd prefer
3 if you think you can tie it something more than just
4 generalized traffic in the area. Okay?

5 MS. QUINN: Yes.

6 EXAMINER: So, the next one is 150H.

7 MS. MEAD: It's the photograph. We'll just
8 address those --

9 EXAMINER: Cross-examination?

10 Am: -- in cross.

11 EXAMINER: Okay. So, that'll be admitted.

12 MS. MEAD: 150I appears to be accident statistics.
13 They just don't seem to be relevant. University Boulevard
14 doesn't include the portion that is near the site or
15 included in the traffic study. It doesn't even go up to --
16 it doesn't look like it goes up to Colesville.

17 MS. QUINN: It actually covers from Sligo Creek
18 all the way to the Beltway on the other side of Colesville.
19 So, it does include Colesville.

20 MS. MEAD: And again, just to show --

21 EXAMINER: Where are these intersections? I mean,
22 where are these from? The accident data? Where on
23 Colesville?

24 MS. QUINN: This is on Colesville. It includes
25 the whole Four Corners area from Crestmoor Drive to the

1 north to the Beltway to the south, and so --

2 EXAMINER: Okay.

3 MS. QUINN: And then University from Sligo Creek
4 to the Beltway.

5 EXAMINER: Does it include University -- I don't
6 have the geography enough. Does it include the portion of
7 University that borders this property?

8 MS. QUINN: Yes. It includes the entire stretch.
9 It doesn't have individual statistics. I can get that but
10 it doesn't have an individual statistic for that
11 intersection.

12 EXAMINER: The Brunett intersection?

13 MS. QUINN: Yes. This would be where cars would
14 be traveling to get to the facility, along these two routes.

15 EXAMINER: Okay. I guess I'm just -- this is a
16 collective traffic impact and it does include the area of
17 University that borders this site?

18 MS. QUINN: Yes. It does.

19 EXAMINER: Okay. I'll let 150I in and let you all
20 cross-examine on it. 150J, pedestrian road safety audit.

21 MS. MEAD: It's the same objection. It's for the
22 study area of Four Corners which doesn't include the subject
23 property in the study.

24 EXAMINER: Okay.

25 MS. QUINN: It does include the Four Corners

1 intersection which the applicant's engineer studied in terms
2 of pedestrian counts.

3 EXAMINER: Well, I guess think of the special
4 exception criteria.

5 MS. QUINN: Right.

6 EXAMINER: Which one of the criteria does this go
7 to that it's --

8 MS. QUINN: Adequate public facilities.

9 EXAMINER: Though --

10 MS. QUINN: The applicants claim that the roads
11 are operating at an acceptable level of service, and this
12 shows the conflicts between pedestrians and cars and the
13 fact that the -- it's a very high impact area. It was high
14 enough that the county decided they needed to do an audit of
15 all the pedestrian crashes there.

16 EXAMINER: Okay. Does this cover a geographical
17 area or is it only Colesville Road and University Boulevard
18 section?

19 MS. QUINN: Most of it is at the Four Corners
20 intersection which they consider the most dangerous part.
21 But, it does extend to several roads in both directions.

22 MS. MEAD: The study area's on circle 43.

23 EXAMINER: Thank you. Okay. It's close but not
24 quite to Brunett.

25 MS. QUINN: Correct. It doesn't go to Brunett

1 but it does go -- it is in a portion of the study area.

2 EXAMINER: Well, the study area was for critical
3 lane volume.

4 MS. QUINN: I'm talking about the neighborhood,
5 designated neighborhood, from the planning staff for the
6 special exception.

7 EXAMINER: Okay. Again, I'll let it in. I'll
8 give you the opportunity. I'll let it in for the weight it
9 deserves. Again, you have to prove that -- I'll let it in
10 for the weight it deserves. Okay? And then the next one
11 is --

12 MS. MEAD: Silver Spring Patch excerpts about a
13 pedestrian being struck.

14 EXAMINER: Okay. Thank you. And do you have an
15 objection to this?

16 MS. MEAD: Just to the relevance.

17 EXAMINER: I'll let it in for the weight it
18 deserves, and 150 -- I can't read my own writing. I? L?

19 MR. LEIBOWITZ: L.

20 EXAMINER: 150L. Emails between SHA and
21 Woodmoor/Pinecrest.

22 MS. MEAD: Same objection as far as --

23 EXAMINER: Relevance?

24 MS. MEAD: -- relevance.

25 EXAMINER: Can you cross on relevance?

1 MS. QUINN: Well, again, this is all about
2 available capacity of the roads in Four Corners. SHA
3 clearly states that the intersection that was studied by the
4 applicant is operating at maximum capacity. They also state
5 that they have no plans in the future to add capacity and
6 that the request that we made for improvements to the
7 intersection would not be done because there are so many
8 issues and problems with congestion in the intersection.

9 EXAMINER: Okay. Well, I will let it in, and it
10 will be subject to cross-examination. Okay. That's all of
11 them. So, now if you haven't felt like you've already
12 testified to them, we're going to have you go over it again.

13 MS. QUINN: Okay.

14 EXAMINER: All right? Ms. Mead, do you want to
15 wait for cross-examination on all of it until she finishes
16 150A through L, the whole thing, or do you want to go one by
17 one?

18 MS. MEAD: We'll wait for the whole thing. I'll
19 just wait and do all the cross at once.

20 EXAMINER: Okay. All right. Go ahead.

21 MS. QUINN: Okay. So, the first exhibit, 150A, is
22 the 2011 mobility assessment report from the park and
23 planning commission which is based on data that they collect
24 including critical lane volumes, and they also measure
25 travel time for various cargos throughout the county.

1 EXAMINER: Okay.

2 MS. QUINN: And so page 3 of 150A, it states that
3 southbound 29 from Howard County to University Boulevard
4 exhibited the slowest travel time and the lowest arterial
5 mobility that they studied. I'll try to go through this
6 quickly and just highlight the points.

7 EXAMINER: Well, I mean, make sure you say what
8 you think is important.

9 MS. QUINN: Circle 4 of that report, again, we
10 talked about this before. Nineteen, meaning it's the 19th
11 most congested intersection in the county, Colesville Road
12 at University Boulevard, southern leg. The critical lane
13 volume was 1680. The LATR standard is 1600.

14 EXAMINER: So, is your point on this one that the
15 1680 is more than the applicant's traffic study?

16 MS. QUINN: Yes. The applicant's traffic study,
17 well, the applicant is asserting that the Four Corners
18 intersection is operating in an acceptable capacity, and all
19 of these reports show that it is not and has not for many
20 years.

21 EXAMINER: Okay.

22 MS. QUINN: If it's beyond the critical lane
23 volume, it's operating at a level of service of F.

24 EXAMINER: Okay. All right. Go ahead.

25 MS. QUINN: And circle 5 just shows the

1 progression of intersections down Route 29. The ones that
2 are underline show, again that they're beyond the 1600.
3 Circle 6 shows the statement that says southbound travel
4 along US 29 and Maryland 355 has the slowest times and
5 slowest, 95th percentile, times. Maryland 193 has slightly
6 more congested travel times in the westbound direction.
7 However, the difference is small.

8 EXAMINER: Okay.

9 MS. QUINN: Then circle 8 and 9, it gives a
10 description of both US 29 and Maryland 193 eastbound and
11 westbound, and it indicates that both of these roads have
12 some of the highest congestion that the county has sampled
13 in the entire county. Southbound 29 travel during the
14 morning peak period on US 29 has the highest congestion of
15 all the samples in this report. That's on circle 8. And
16 so, that's it for 150A that I wanted to highlight again.

17 EXAMINER: Okay.

18 MS. QUINN: But this is the most current report
19 that the county has in 2011, and it shows that both roads,
20 in terms of travel time, are not operating at an acceptable
21 level and in terms of critical lane volume at Four Corners,
22 it's still at an F level.

23 EXAMINER: Okay.

24 MS. QUINN: 2009. Again, circle 11 shows the
25 critical lane volume at 1680 for Colesville Road at

1 University Boulevard, southern leg. Again, the same portion
2 of the intersection that the applicant's traffic study has
3 studied.

4 Circle 12, again, shows the progression from --
5 the ones that are underlined shows the progression coming
6 down southbound 29 that all of those intersections are
7 beyond the 1600 LATR standard and, therefore, operating at
8 an unacceptable level of service.

9 Circle 13 shows the travel time along US 29 and
10 that the most congested parts are between Georgia Avenue and
11 the Four Corners intersection area all the way through
12 Southwood Avenue. That's during rush hour.

13 And just to re-iterate that, on circle 14, it has
14 a discussion of Colesville Road from Silver Spring to
15 Industrial Parkway. There are eight intersections along US
16 29. The CLV figures in the top 60 most congested in the
17 county of these intersections and they are located, I'm
18 sorry, within, Dale Drive -- the names of the intersections
19 with 29 are Dale Drive, Sligo Parkway, Southwood, University
20 Boulevard, North and South and Franklin Avenue. Okay.

21 150C is the portions of the Woodmoor/Pinecrest
22 community discussion paper. Again, that is an ongoing study
23 that we've had with the county and in response to the cut
24 through traffic through our neighborhood. The cars that cut
25 through the neighborhood are not counted in the CLV at the

1 intersection. So that is another point we'd would like to
2 make is that the CLV numbers would be even higher if the cut
3 through traffic, not just through the Woodmoor neighborhood,
4 but through the Northwood-Four Corners neighborhood and the
5 South Four Corners neighborhood because people are trying to
6 avoid the intersection to either get to the Beltway entrance
7 or go downtown Silver Spring or any opposite direction to go
8 around to go north on 29. So, the master plan discusses cut
9 through traffic quite a bit and that the county needs to
10 work with the community to have transportation management
11 programs to help avoid the cut through traffic. That's why
12 we qualified for this because of the volume of the cut
13 through traffic. Almost 70 percent of the volume coming
14 through is determined to be cut through. We are now in a
15 discussion phase which is what this paper is so we can
16 determine what some of the remedies are but the burden is on
17 us to figure out what the remedies will be because as you
18 saw with the state highway correspondence, they are
19 unwilling to make any changes to help us alleviate that cut
20 through traffic and that's what -- we'll get to that at the
21 end.

22 But, that's sort of the basis for this study and
23 during the study, they, obviously, collected the critical
24 lane volumes at US 29 and University Boulevard westbound and
25 eastbound. Which, again, are showing a level of service of

1 F in the morning peak hours.

2 150D is the transmission memo from transportation
3 planning staff in the Bank of America case in Woodmoor.
4 Again, this is just to illustrate the -- again, we haven't
5 seen a study that has had an acceptable CLV at the
6 intersection.

7 150E is the backup information from the traffic
8 group on their analysis, their traffic analysis which shows,
9 again, US 29 and westbound 193 at 1917 CLV.

10 The next group, 150G, are the volume counts from,
11 well, actually, if I could skip over that for a minute and
12 go to --

13 EXAMINER: The 150G?

14 MS. QUINN: Yes.

15 EXAMINER: Okay.

16 MS. QUINN: And go to the photographs --

17 EXAMINER: Yes.

18 MS. QUINN: -- that show the --

19 EXAMINER: It's, okay. I see that's 150H.

20 MS. QUINN: Yes. Okay. I won't go through each
21 photograph, but I would like to point out on the first,
22 circle 33, the upper left photograph is trying to turn right
23 out of Burnett Avenue onto University Boulevard heading
24 eastbound towards Four Corners.

25 EXAMINER: Okay. And can you describe the -- are

1 you going clockwise?

2 MS. QUINN: I can. Yes. To the right of that, in
3 the upper right, is approaching Burnett Avenue traveling
4 westbound on University approaching the left turn to turn
5 left into Burnett, and this is morning. Then the lower
6 right is also turning left into Burnett. The picture on the
7 lower left is just a view of southbound traffic on 29
8 approaching Four Corners intersection.

9 EXAMINER: Okay.

10 MS. QUINN: The circle 34 is from left, again,
11 trying to turn right onto Burnett, I'm sorry, onto
12 University eastbound. The photograph below that, lower
13 left, shows a car that pulls up and to the left to try to
14 turn left onto University Boulevard. You can see it's not a
15 signalized intersection. So, the wait times to turn left or
16 right are significant. On the right side are pictures after
17 turning onto University Boulevard headed towards Four
18 Corners in the morning, and the traffic can back up there
19 from Four Corners back to Dennis. And circle 35 shows
20 additional pictures approaching the Four Corners at an
21 intersection heading eastbound on University.

22 EXAMINER: Where are these in reference to the
23 subject property? Are any of these --

24 MS. QUINN: Well, the ones at the beginning that I
25 talked about turning right onto University from Burnett?

1 EXAMINER: Yeah.

2 MS. QUINN: That's from the subject property.

3 EXAMINER: Okay. All right. These are, in
4 general, on University approaching 29.

5 MS. QUINN: Yes. And then on circle 34 in the
6 lower right corner --

7 EXAMINER: Uh-huh.

8 MS. QUINN: -- that's right in front of the
9 subject property on University Boulevard.

10 EXAMINER: Okay.

11 MS. QUINN: Heading eastbound towards Four
12 Corners.

13 EXAMINER: Okay.

14 MS. QUINN: Okay. So I'm back on 35, circle 35.
15 Again, more pictures showing the backup from Four Corners.
16 At this point, we're at Lorraine Avenue in the lower right,
17 and you can see the cars lined up all the way to Four
18 Corners and, by the way, there are no traffic incidents on
19 this day that would -- this is a typical morning in Four
20 Corners. In the right hand picture, upper right, you can
21 see the traffic turning right onto southbound Colesville
22 Road at University and that backup is for people trying to
23 enter that Beltway entrance that we talked about. So, there
24 are times when that backup crosses over the intersection
25 with University Boulevard and blocks traffic --

1 EXAMINER: I see.

2 MS. QUINN: -- all the way back.

3 EXAMINER: To where? All the way back to --

4 MS. QUINN: Well, the traffic on southbound
5 Colesville can back up all the way to New Hampshire Avenue
6 which is a couple of miles.

7 EXAMINER: Okay. What about University eastbound?

8 MS. QUINN: University eastbound in the morning
9 sometimes back to Dennis Avenue. It takes several cycles to
10 get through. Those are the ones that I just wanted to
11 highlight especially the turn at Colesville South. Oh. And
12 you can see in the middle picture there on 35, the right
13 middle picture. That's, again, trying to turn and all those
14 cars in front are lining up to enter the Beltway which is a
15 single lane, and then on 36, again, that's the backup to get
16 onto the Beltway.

17 EXAMINER: From which direction?

18 MS. QUINN: From southbound Colesville Road --

19 EXAMINER: Oh. I see. US 29.

20 MS. QUINN: -- after turning from University
21 eastbound.

22 EXAMINER: Right.

23 MS. QUINN: Southbound Colesville. And on the
24 upper right picture, just to the right of that, I know it's
25 not in the picture, but it's that special exception house --

1 EXAMINER: Area.

2 MS. QUINN: -- that we talked about. Yes.

3 MR. LEIBOWITZ: Okay. In Exhibit 149.

4 MS. QUINN: The next, 37 and 38, are, and 39 for
5 that matter, are all pictures of southbound traffic starting
6 at Four Corners all the way through Burnt Mills and almost
7 to New Hampshire Avenue on the southbound Colesville Road.

8 So, if I could go back now to circle, I'm sorry,
9 Exhibit 150G, the SHA volume accounts.

10 EXAMINER: Okay. That's circle 28?

11 MS. QUINN: Yes.

12 EXAMINER: Okay.

13 MS. QUINN: And again, I just wanted to provide
14 some reference in terms of the volume of traffic that's
15 coming down to enter that Beltway entrance that you saw in
16 the pictures and that it is double any other southbound
17 corridor entrance for 495 westbound. Just to give some
18 perspective on the issues that are in the Four Corners area
19 in terms of traffic. The 150I is the --

20 EXAMINER: Can you give me a circle number for
21 that?

22 MS. QUINN: Yes. 40.

23 EXAMINER: Okay.

24 MS. QUINN: That's the accident data that was
25 transmitted.

1 EXAMINER: Yes. Okay.

2 MS. QUINN: And, again, just to show the safety
3 concerns that residents have about the operation of these
4 two roads in the area, and I think you could see from some
5 of the pictures that if you're trying to turn left into the
6 facility from University Boulevard, it's very difficult to
7 make that turn. It's also very difficult in the morning.
8 It's also very difficult to turn left from Burnett onto
9 University heading west. Very dangerous.

10 EXAMINER: Okay.

11 MS. QUINN: The next, circle 41, which is Exhibit
12 150J, is the pedestrian safety audit, and as we discussed to
13 illustrate, particularly on circle 45, the safety issues of
14 pedestrian crashes with vehicles that have been happening
15 over the years.

16 EXAMINER: Okay.

17 MS. QUINN: The applicant did review pedestrian
18 counts at that very intersection where you see. The most of
19 which --

20 EXAMINER: Which circle?

21 MS. QUINN: 45.

22 EXAMINER: Oh. I'm sorry. Okay.

23 MS. QUINN: If you look at circle 45, the diagram
24 of where the pedestrian accidents have occurred with the
25 cars, you'll see that most of them are at the intersection

1 with University and Colesville. The southern leg, between
2 the northern and southern leg. Not so much above the
3 northern leg but mostly surrounding that corner there.
4 There are over, almost 3,000 students that cross there at
5 Blair High School, and I think over 50 percent of them
6 commute on buses, Metro buses. And you'll see in the
7 pictures contained in this report that a lot of them are
8 overcrowded. On circle 49, upper left picture, you'll see
9 how crowded those bus stops are, and that is the turn onto
10 southbound Colesville from eastbound University which the
11 applicant studied. So, again this just goes to the safety
12 concerns that residents have about the conditions, the
13 traffic conditions and the capacity at Four Corners. Circle
14 50 is just to note that after this study --

15 EXAMINER: Which is 150K.

16 MS. QUINN: 150K. Thank you. Is just to show
17 that even after this pedestrian safety audit was done which
18 only shows data for 2010, I believe, but additional
19 accidents are occurring there, pedestrian accidents.

20 EXAMINER: Okay.

21 MS. QUINN: And then lastly is Exhibit 150L.
22 Thank you. Which is the correspondence between our
23 association and the State Highway Administration for the
24 last two years because of the study we've been involved with
25 with the county concerning cut through traffic.

1 EXAMINER: Uh-huh.

2 MS. QUINN: We requested that SHA make some
3 improvements to the Four Corner intersection --

4 EXAMINER: Uh-huh.

5 MS. QUINN: -- to discourage traffic from coming
6 through the neighborhood, and they have basically said they
7 won't do any of those; and if I could read some of their
8 statements. It says that -- circle 52. We've contacted our
9 office of traffic and safety regarding this implementation,
10 and we're informed that this intersection is running at its
11 maximum capacity, and they're talking about the Four Corners
12 intersection with University Boulevard and Colesville Road,
13 and again, in response to 4, US 29 and Maryland 193 is
14 operating at maximum capacity, and we've been informed by
15 State Highway, well, if it's at maximum capacity, do you
16 have any plans to add capacity in the near future, and we
17 were told no, and it's confirmed in this email that they do
18 not, and so, all of this goes to whether or not there is
19 available capacity in Four Corners area for additional
20 development, and under the LATR standards, if the road is
21 not operating at a certain level of service, the project
22 really shouldn't be developed without significant traffic
23 mitigation at that intersection, and SHA has told us that
24 there won't be any. So --

25 EXAMINER: I see, and so you're asking why that

1 one portion of the intersection was not required to be
2 included by technical staff.

3 MS. QUINN: Well, that's one portion but we also
4 don't agree with the applicant's statement that says that
5 the roads surrounding this area are operating at an
6 acceptable level of service because there isn't one study
7 that we've seen before --

8 EXAMINER: I see.

9 MS. QUINN: -- that says that it is since before
10 1992.

11 EXAMINER: Okay. I understand.

12 MS. QUINN: And all of these are government
13 generated documents.

14 EXAMINER: Okay.

15 MS. QUINN: Some of them are from consultants for
16 the government.

17 EXAMINER: For the -- right. Okay. Thank you.

18 MS. QUINN: Thank you.

19 EXAMINER: Now, don't go anywhere because I'm sure
20 that Ms. Mead is going to ask you questions. Ms. Mead?

21 MS. MEAD: Thank you. Ms. Quinn?

22 MS. QUINN: Uh-huh.

23 MS. MEAD: I'll start with your master plan
24 statement.

25 MS. QUINN: Okay.

1 MS. MEAD: The pages you referenced regarding
2 pages 33 and 34 of the master plan which show figure 13 and
3 figure 14. Could you describe what the name of those two
4 diagrams is?

5 MS. QUINN: On page 33, figure 13, the name is
6 existing commercial zoning.

7 MS. MEAD: And figure 14?

8 MS. QUINN: Commercial zoning plan.

9 MS. MEAD: Are you aware that the applicant is not
10 asking to be commercially zoned with a special exception
11 application?

12 MS. QUINN: I am aware of that.

13 MS. MEAD: And then you had noted that the other
14 special exception cases in the record -- you'd mentioned two
15 of them. There's actually three of them that have -- you
16 said they had larger properties.

17 MS. QUINN: Uh-huh.

18 MS. MEAD: Are you also aware that they have over
19 100 children approved for those special exceptions daycare?

20 MS. QUINN: Yes. They're in the record.

21 MS. MEAD: And did the planning board's
22 recommendation, both of them, did they, did the planning
23 board opine that the location of the property was a
24 prohibition on a special exception use on the property?

25 MS. QUINN: Well, at the first hearing, one of the

1 members of the board said that they were --

2 MS. MEAD: In the planning board's recommendations
3 to the hearing examiner?

4 MR. LEIBOWITZ: If she could let the witness
5 answer?

6 EXAMINER: Yeah. Can you refer to an exhibit?

7 MS. MEAD: Yes. I'll refer to Exhibit 94, the
8 June 27th planning board letter from Francoise Carrier to
9 the hearing examiner. Is it correct that the planning board
10 notes that the plans guidance is not a mountain to an
11 absolute prohibition of a child daycare center on the
12 subject property?

13 MR. LEIBOWITZ: Well, if she could show the
14 witness the exhibit?

15 MS. QUINN: Well, if I could have it I could tell
16 you.

17 EXAMINER: Can you show her the -- yeah, and which
18 planning board recommendation?

19 MS. QUINN: This is the second recommendation
20 you're talking about?

21 MS. MEAD: June 27th.

22 MS. QUINN: Which is the second one. Correct?

23 MS. MEAD: Correct.

24 EXAMINER: It's Exhibit 94?

25 MS. MEAD: Exhibit 94.

1 MS. QUINN: It says that the board is not
2 convinced that the plans guidance amounts to an absolute
3 prohibition.

4 MS. MEAD: Thank you.

5 MS. QUINN: But, it doesn't say it's compatible,
6 though.

7 MS. MEAD: Does it say if designed, scaled, and
8 buffered appropriately?

9 MS. QUINN: It does say that.

10 MS. MEAD: And in the, sorry. Did the planning
11 staff report dated November 3, 2011, did they find the Four
12 Corners master plan prohibits the special exception daycare
13 use on this property?

14 MS. QUINN: Did they find it prohibits it? No.
15 They stated that the word prohibited was not allowed to be
16 used in the master plan process back in 1994, 5, and 6.

17 MS. MEAD: In the staff report it states that?

18 MS. QUINN: It does. Page 19 of the first staff
19 report. Mr. Boyd's --

20 MS. MEAD: I was asking about the November 3, 2011
21 staff report.

22 MS. QUINN: Oh. You'll have to show me.

23 EXAMINER: Well, let me ask you. I mean, the
24 documents sort of speak for themselves. Is there something
25 you want to elicit about her testimony here or if it's just

1 a matter of pointing out --

2 MS. MEAD: Are you aware that the November 3, 2011
3 staff report which is based on the current proposal and the
4 current special exception proposal, not the one submitted in
5 2010, recommends approval of the special exception that is
6 consistent with the Four Corners master plan?

7 MS. QUINN: I'm aware that they've recommended
8 approval.

9 MS. MEAD: Thank you. In the 150 exhibits --

10 MS. QUINN: Uh-huh.

11 MS. MEAD: You had already testified or noted when
12 we were discussing the exhibits that the applicant's
13 intersection analysis includes University Boulevard
14 eastbound at Colesville Road.

15 MS. QUINN: Yes.

16 MS. MEAD: Could you show us where, on Exhibit
17 150, where it has University Boulevard eastbound at
18 Colesville in the intersection?

19 MS. QUINN: In Exhibit 150?

20 MS. MEAD: Yes. Or does it only show Colesville
21 with University going southbound?

22 MS. QUINN: It includes all the turning events at
23 Colesville Road South, at University Boulevard, and when
24 they say asp, they're referring to those two branches of
25 University and they call it the northern and the southern

1 leg. This is the southern leg which is the intersection
2 that is in your study.

3 EXAMINER: And which one is that in 150?

4 MS. QUINN: In 150 it's --

5 EXAMINER: On circle 5?

6 MS. QUINN: Circle 4.

7 EXAMINER: 4.

8 MS. QUINN: At 19.

9 EXAMINER: Okay.

10 MS. QUINN: This is the leg that's consistently,
11 over the years, been the highest in terms of the CLV, and as
12 I said, we've never --

13 MS. MEAD: Colesville Road headed south, not
14 Maryland, not University Boulevard headed east?

15 MS. QUINN: Yes. It includes University
16 Boulevard. It's the whole intersection. It's that portion
17 of the intersection.

18 EXAMINER: Let me just -- where is that?
19 Basically, it's all the turning movements?

20 MS. QUINN: Well, when they show you a critical
21 lane volume for that intersection, it includes the same
22 turning movements that would be in this study as well. It's
23 the same intersection. Even though you may refer to this as
24 193 eastbound and Colesville Road, this is the same part of
25 the Four Corners intersection as that.

1 EXAMINER: So, your testimony is that it's just
2 differentiating between the northern portion and the
3 southern portion. Do you have a picture of the --

4 MS. QUINN: Yes.

5 EXAMINER: -- of the intersection?

6 MS. QUINN: I'm going to refer to a picture.

7 EXAMINER: I thought I saw one. Maybe it's in the
8 pedestrian stuff.

9 MS. QUINN: Yeah. I think it is. Now I can't
10 find it.

11 MR. LEIBOWITZ: On page 45.

12 EXAMINER: Circle 45?

13 MR. LEIBOWITZ: Circle 45 of Exhibit 150.

14 EXAMINER: Thank you.

15 MR. LEIBOWITZ: You're welcome.

16 EXAMINER: Yes. Okay. Are you on that page 45?

17 MS. QUINN: Yes. Yes.

18 EXAMINER: Can you describe from the record which
19 -- is it a differentiation between the intersection shown on
20 the -- assuming north is up toward the top of the page, on
21 the northern part?

22 MS. QUINN: Yes. This is the location.
23 Colesville Road is heading north and south. This particular
24 critical lane volume is at the intersection of Colesville
25 South and University East.

1 EXAMINER: Okay.

2 MS. QUINN: Which is that -- if you're looking at
3 the picture, it's the southern.

4 EXAMINER: It's the one towards the bottom of the
5 page.

6 MS. QUINN: Yes.

7 EXAMINER: Yeah. You can't just point just
8 because it's -- it's the intersection shown at the bottom of
9 the page.

10 MS. QUINN: Right. With regard to the question
11 about why the whole intersection wasn't studied, we're
12 referring to that northern part of University that is not
13 included in the applicant's study, and people would be
14 coming from that direction to go to the proposed facility.

15 EXAMINER: People would be coming from that
16 direction as they're southbound on Colesville --

17 MS. QUINN: Colesville.

18 EXAMINER: -- and want to go westbound towards the
19 site?

20 MS. QUINN: Yes. And they could be coming, also,
21 from the east and crossing over Colesville Road to --

22 EXAMINER: Oh. I see what you're saying.

23 MS. QUINN: Yes.

24 EXAMINER: Okay.

25 MS. MEAD: So, to clarify, you included that

1 intersection because you believe it should have been
2 included in the traffic study not because it's the one
3 that --

4 MS. QUINN: That is the one that you --

5 MS. MEAD: -- planning staff?

6 MS. QUINN: No. That's the one that you studied.
7 The one here that we're talking about --

8 MS. MEAD: Is it clarified in the --

9 EXAMINER: When you say -- okay. Slow down a
10 second because when you say here, I don't know what you're
11 talking about --

12 MS. QUINN: I'm sorry.

13 EXAMINER: -- and the transcriber doesn't know
14 what you're talking about. So --

15 MR. LEIBOWITZ: And Ms. Mead is talking over the
16 witness as she's attempting to answer which is one,
17 difficult to transcribe, and two, hard for her to answer.
18 So --

19 EXAMINER: Okay. You have the stage. Can you
20 describe from this what intersection you're referring to and
21 can you hold, I don't know who it is back there but can you
22 not have the cross talk because the reporter won't pick up
23 what they're saying. Okay? Okay. Ms. Quinn, can you go
24 again. Which intersection are you saying they did include
25 in the study?

1 MS. QUINN: They included, on circle 4, 19 --

2 EXAMINER: Circle 40. Oh. Circle 4.

3 MS. QUINN: Circle 4.

4 EXAMINER: And that intersection is depicted on
5 circle 45 of --

6 MS. QUINN: As the lower portion.

7 EXAMINER: As the lower intersection.

8 MS. QUINN: Yes.

9 EXAMINER: Okay. And which did they not include
10 in the applicant's traffic study?

11 MS. QUINN: The westbound portion of University
12 Boulevard at Colesville Road which is the upper portion in
13 that picture.

14 EXAMINER: Okay. On circle 45, it's the upper
15 intersection, westbound --

16 MS. QUINN: On University.

17 EXAMINER: -- turning left onto Colesville Road?

18 MS. QUINN: No. No. No.

19 EXAMINER: Oh. Turning southbound

20 MS. QUINN: All of it. Yeah.

21 EXAMINER: Oh.

22 MS. QUINN: None of its been included in their
23 study.

24 EXAMINER: Okay. All right.

25 MS. QUINN: Nothing on westbound University at

1 Colesville is included in the study. So, in other words --

2 EXAMINER: Okay. I know you guys got to consult.

3 But--

4 MS. QUINN: So, the westbound portion of
5 University was not included in the study, and I understand
6 that that was the scope they were given.

7 EXAMINER: Okay.

8 MS. QUINN: But we're questioning --

9 EXAMINER: And your question of park and planning
10 staff is why wasn't the other portion included?

11 MS. QUINN: Right. Because in the LATR standards,
12 they should be studying both directions, not just one
13 direction from the facility but both directions.

14 EXAMINER: Okay.

15 MS. QUINN: So, this is a complex intersection but
16 it's one way this way and one way that way and only this,
17 the southern portion --

18 EXAMINER: Got you.

19 MS. QUINN: -- was studied, and --

20 EXAMINER: And I'm sorry. Which one's westbound
21 and which -- is the southern one --

22 MS. QUINN: The southern one is heading east, and
23 the northern road is heading west.

24 EXAMINER: Got you.

25 MS. QUINN: And, going back again to circle 4,

1 19 --

2 EXAMINER: Exhibit 150.

3 MS. QUINN: On Exhibit 150, 19 shows the critical
4 lane volume of 1680. That is the same leg that was studied
5 in B.

6 EXAMINER: Okay.

7 MS. QUINN: And it shows a different result. It
8 shows a level of service of F beyond LATR standard of 16,
9 and historically, it has always been above 1600.

10 EXAMINER: Okay. All right.

11 MS. QUINN: Which is why I put all the other
12 information in the record to show --

13 EXAMINER: I see.

14 MS. QUINN: -- that historically, it's always been
15 above that.

16 EXAMINER: Okay. All right. Okay. Ms. Mead, do
17 you --

18 MS. MEAD: And what is the, on circle 4, what is
19 the count date for that CLV?

20 MS. QUINN: January 22, 2009.

21 MS. MEAD: Thank you. And the circle 11, does
22 that just show the same information?

23 MS. QUINN: Yes. It does.

24 EXAMINER: You mean that same count date or 2009?

25 MS. MEAD: The same count date and the same --

1 EXAMINER: Okay. I got you.

2 MS. MEAD: And on circle 20, is there a count date
3 for the intersection counts on those?

4 MS. QUINN: I don't think that's included in here
5 but I can get that information. The report itself was
6 transmitted to us on September 26, 2011. So, the count was
7 done sometime prior to that, recently, in the past.

8 MS. MEAD: How do you know it was recently in the
9 past?

10 MS. QUINN: The study was conducted within the
11 past two years.

12 MS. MEAD: Were the critical lane volumes counted
13 during the same period?

14 MS. QUINN: Well, as I said, I don't have the
15 exact date but again, this study was conducted in the last
16 two years. We started in 2008 with the qualifying phase.
17 That took about a year and a half. The traffic engineers
18 started about a year and a half ago, I think. But, I can
19 get you the date for that.

20 MS. MEAD: Because the report doesn't show when
21 they -- the report can be in the past two years but it
22 doesn't necessarily state that their counts have been done.

23 MS. QUINN: Well, the whole process didn't start
24 until 2008 and no engineers went out within two years after
25 that because we were qualifying for the cost for the study.

1 So --

2 MS. MEAD: And in Exhibit 22 from 2006 --

3 MS. QUINN: Circle 22.

4 MS. MEAD: Circle 22.

5 MS. QUINN: Right.

6 MS. MEAD: Which is a report from 2006 --

7 MS. QUINN: Uh-huh.

8 MS. MEAD: On circle 21, does it recommend any
9 improvements for that particular use?

10 MS. QUINN: There were a lot of improvements that
11 aren't included in this. I was just, I submitted this to
12 show the critical lane volume but yes --

13 MS. MEAD: So, there could have been improvements
14 to University Boulevard required as part of this project
15 which were done subsequent to March 3, 2006.

16 MS. QUINN: No. There were not any improvements
17 to University Boulevard. The recommended improvement was to
18 widen the entrance at Lexington Drive which would be one of
19 the entrances for the bank. But, there were no improvements
20 to University Boulevard, only to the entrances to the
21 shopping center and to Lexington Drive.

22 MS. MEAD: At the westbound lanes of University
23 Boulevard?

24 MS. QUINN: Correct. But nothing on -- they were
25 suggesting to add a lane to Lexington Drive which is a

1 county road. There were no state highway improvements
2 recommended.

3 MS. MEAD: But the planning staff recommended
4 approval?

5 MS. QUINN: They did. But it was never built.

6 EXAMINER: Wait. The use was never built or the
7 improvement was never built or both?

8 MS. QUINN: The building was never built.

9 EXAMINER: Was the road improvement built?

10 MS. QUINN: No.

11 EXAMINER: No. Okay.

12 MS. MEAD: For your photographs on pages 33
13 through -- it was not clear if they were all taken on the
14 same day. It just says Tuesday at 7:50 a.m.

15 MS. QUINN: I can tell you which ones were -- some
16 were not taken the same day.

17 MS. MEAD: Was it raining on the day you took the
18 pictures?

19 EXAMINER: Well, wait. Wait. Let her finish her
20 answer. Which photographs are you talking about.

21 MS. MEAD: I'm asking about 33 and 34.

22 EXAMINER: Okay.

23 MS. MEAD: Appear to be --

24 EXAMINER: So, were they taken on the same day?

25 MS. QUINN: They were.

1 EXAMINER: Okay.

2 MS. MEAD: That was this Tuesday at 7:50 a.m. or
3 Tuesday at 8:00 a.m.?

4 MS. QUINN: Not this Tuesday. It was, I'm going
5 to say this Tuesday.

6 MR. LEIBOWITZ: Just three days ago Tuesday?
7 What's this Tuesday?

8 EXAMINER: How about when were they taken? How's
9 that?

10 MS. QUINN: They were taken on a weekday morning
11 which was what I was trying to show that they were -- that
12 this is morning rush hour, and I put the time just to show
13 what the conditions are like in that time of day.

14 MS. MEAD: And it shows 7:50 a.m. and 8:00 a.m.?

15 MS. QUINN: Let's see. The top two, yes. Upper
16 left is 8:00 a.m. Upper right is 7:50 a.m. on circle 43.

17 MS. MEAD: And are you aware of the testimony in
18 the TMP language that the peak period for this use is from
19 8:00 a.m. to 9:15 a.m.?

20 MS. QUINN: I'm not aware of that but I --

21 MS. MEAD: And again, the pictures of the US 29 to
22 access 495 ramp, your testimony wasn't that the ramp should
23 be included in the traffic study is it?

24 MS. QUINN: No.

25 MS. MEAD: And on circle 40, SHA was not able to

1 or Montgomery County was not able to provide the
2 intersections where those incidents occurred, the
3 collisions?

4 MS. QUINN: Well, I didn't collect this data
5 necessarily for this case. So, I didn't ask for that. But,
6 they could if I'd asked for it. I just was collecting this
7 for something else. I was just going to turn it into the
8 record to show those safety issues on those roads.

9 MS. MEAD: And are you familiar with the
10 pedestrian improvements proposed with this special exception
11 of the crosswalk across Burnett Avenue at University
12 Boulevard and sidewalks along the shopping center?

13 MS. QUINN: Yes.

14 MS. MEAD: No further questions for this witness.

15 EXAMINER: Okay. Mr. Leibowitz?

16 MR. LEIBOWITZ: I'll be brief. Based on all your
17 testimony regarding the traffic and the pictures, et cetera,
18 do you believe that makes it more likely that busy working
19 parents will be cutting through the neighborhoods to avoid
20 these intersections?

21 MS. QUINN: Yes.

22 MR. LEIBOWITZ: And is that something that's
23 specifically discouraged in the master plan?

24 MS. QUINN: Yes. It is.

25 MR. LEIBOWITZ: You were just asked a moment ago

1 about the pedestrian improvements. Are there also sidewalks
2 and crosswalks other places in Four Corners where there are
3 pedestrians struck by vehicles?

4 MS. QUINN: Yes.

5 MR. LEIBOWITZ: And one last question. I'm going
6 to show you Exhibit 78, picture 10.

7 EXAMINER: Are those pictures numbered? I just --

8 MR. LEIBOWITZ: Yes. Well, this one is.

9 EXAMINER: Okay.

10 MR. LEIBOWITZ: Yes. So, this is 10.

11 MS. QUINN: Yes.

12 MR. LEIBOWITZ: Is this the same building that you
13 had in Exhibit 149?

14 MS. QUINN: Yes.

15 MR. LEIBOWITZ: No further questions.

16 EXAMINER: All right. Do you have anything else
17 you'd like to ask?

18 MS. QUINN: I do. Just a couple more things. Not
19 exhibits.

20 EXAMINER: Okay.

21 MS. QUINN: Just a couple things I wanted to say.

22 EXAMINER: Oh.

23 MS. MEAD: Oh. I thought that --

24 MS. QUINN: Yeah. We though you were finished
25 with everything. Okay. Well, go ahead and we'll go ahead.

1 That's fine.

2 MS. QUINN: Okay. I just wanted to -- no. Go
3 ahead.

4 MR. LEIBOWITZ: I'm like way, way into -- I have
5 serious child care issue, ironically.

6 EXAMINER: Well, where do you live? No. I'm
7 teasing.

8 MS. MEAD: That's what I want to know.

9 MR. LEIBOWITZ: I live in the neighborhood. I
10 should be a witness.

11 MS. QUINN: I have two closing comments, very
12 quickly.

13 EXAMINER: Okay.

14 MS. QUINN: And that is that the applicant has
15 mentioned that there were no other childcare special
16 exceptions in the area and that that makes it appropriate
17 for that location, and I wanted to point out that we have a
18 number of childcare centers and childcare facilities in our
19 neighborhoods but they are in the appropriate areas that
20 have sufficient parking and direct access to University
21 Boulevard. It's not necessary to enter down two residential
22 streets to get into them. So, I just wanted to point that
23 out and that the master plan really does not support
24 building new facilities of a commercial type of nature and
25 having them have to penetrate into the neighborhood in order

1 to enter because it just creates additional traffic issues
2 for the neighbors.

3 EXAMINER: Okay.

4 MS. QUINN: That's all. Thank you.

5 EXAMINER: All right.

6 MS. MEAD: I want to cross. I mean, I won't cross
7 on that.

8 EXAMINER: Rebuttal.

9 MS. MEAD: We've a lot.

10 EXAMINER: You have a lot. Okay. Okay. So,
11 we're going to need one more hearing date then. As I said,
12 I have 12-15 or December 15th or I have February 13th?

13 MR. LEIBOWITZ: What is a lot? I have other court
14 appearances on both of those days. So, depending on what a
15 lot means may help me.

16 MS. MEAD: We just have some cross from the
17 original hearing and then some of the new exhibits today, we
18 have some additional -- I mean rebuttal.

19 EXAMINER: Rebuttal.

20 MS. MEAD: Rebuttal. Sorry.

21 EXAMINER: One thing when I was going through and
22 giving you a heads up this time, can Mr. Starkey address, I
23 can't remember at the moment who it was in the opposition
24 and we heard from Ms. Quinn about cut through traffic, and
25 that --

1 MS. MEAD: In our plans, whoever that was.

2 EXAMINER: Okay. I just wanted to give you fair
3 warning this time. Let me just see. So, Mr. Leibowitz?

4 MR. LEIBOWITZ: Yes.

5 EXAMINER: I'm looking through our calendar.

6 MS. MEAD: We request that we go on the 15th in
7 the interest of --

8 EXAMINER: And when are you available on the 15th?
9 And I need to coordinate that if park and planning staff --

10 MR. LEIBOWITZ: So, if we did it at -- I could do
11 it at 3 o'clock and on the 15th. I have hearings at 10:30,
12 11:00, and two hearings at 1:30.

13 EXAMINER: Well, it's hard for me to get a court
14 reporter to go -- we're not going to finish by 5:00 or 6:00
15 or 7:00, I have this feeling but maybe we would. I'd like
16 to get a full day. So, let me take a moment.

17 MR. LEIBOWITZ: Is there any other --

18 EXAMINER: Now, we typically do not schedule on
19 Thursdays because of the planning, you know, a lot of the
20 applicant's attorneys have planning board appearances on the
21 same day because that's when the planning board meets. I
22 have January -- no. Can't do that. I have January 26th,
23 and I have --

24 MS. MEAD: We'll take the soonest we can get.

25 EXAMINER: I'm assuming that part of it. We are

1 really -- let me get some dates from you. Do you have
2 January 12th, 26th --

3 MR. LEIBOWITZ: So, did you say January 12th?

4 EXAMINER: Yeah. Now, if I do this, Ms. Mead --

5 MR. LEIBOWITZ: I could do it January 12th?

6 EXAMINER: All day?

7 MR. LEIBOWITZ: Yes. If we start at 9:00 or 9:30.
8 I could do that for the rest of the day.

9 EXAMINER: Okay. Is that all right for this team?

10 MS. MEAD: We're checking. Yes.

11 EXAMINER: Now, I am going to say one thing. I
12 will do everything I can. If I put it in for the 12th, all
13 right? That means that I'm going to have five reports all
14 doing at the same time. And, in fact, a couple of kind of
15 complicated ones. So, I'm really try to get them out but,
16 if I need an extra week or two, I may have to do that. I'm
17 willing to get the hearing out of the way and do everything
18 I can to try to get all the reports out on time. But, I'm
19 just telling you I may need some kind of extension because
20 some of them are really controversial. Not that this one
21 isn't. I mean, hey.

22 MR. LEIBOWITZ: Like this one?

23 EXAMINER: So, what I'm going to do for the record
24 is I'm going to postpone -- I mean continue this hearing to
25 January 12th at 9:30. I am going to send a request to park

1 and planning staff requesting from them a justification as
2 to why the intersection described by Ms. Quinn was not
3 included in the technical staff report and that intersection
4 you described is the north portion of the intersection of
5 University and Colesville Road. What we can do since we
6 have a little time before January 12th, Mr. Leibowitz, is if
7 you would like, I can solicit a written response from
8 technical staff and then if you still wish to cross-examine,
9 then you can let me know and I will request him to, whoever
10 it is, to be there in person. Is that an acceptable method
11 of going forward?

12 MR. LEIBOWITZ: Yes. Yes.

13 EXAMINER: Okay. So, we will continue the case to
14 January 12th at 9:30. If you could bring in, you know, I
15 leave it to you what witnesses you want to bring in.

16 MS. MEAD: I'm sorry. I did not --

17 EXAMINER: No. It's okay.

18 MS. MEAD: -- understand the extent of your
19 questions from earlier this week.

20 EXAMINER: I'm just telling you my concerns are
21 the traffic and one of my concerns aside from residential
22 scale and size is the -- I do think the re-orientation of
23 the building. I do agree with technical staff. It's a
24 better plan. I still have some concerns on the size and
25 scale. I don't think the property across University is a

1 good comparable, and I'm concerned about the traffic impact
2 on the neighborhood, both cut through traffic, overflow
3 parking, and the justification for not having the northern
4 intersection in there, and so, and I'm not prejudging
5 anything. I'm just trying to give you the opportunity to
6 know where I'm coming from as far as what we've heard so
7 far. Okay? And I have great faith that Mr. Starkey will be
8 prepared to answer everything. Okay? Yes, sir?

9 MR. STARKEY: Storm water management.

10 EXAMINER: Yes. And if we could have someone in
11 here. What I could for storm water is I didn't see anything
12 in the staff report on storm -- thank you, sir, but I didn't
13 see anything in the staff report on storm water management.
14 If you want to submit something to technical staff, and I
15 could get, you know, just a recommendation from them on the
16 storm water so we're all covered, we can have that come in
17 through technical staff. I didn't see them look at it.
18 There's nothing in their recommendation on storm water. So,
19 if you want to submit something to park and planning and at
20 the same time give a copy to Mr. Leibowitz or, you know,
21 request technical staff to issue something on the storm
22 water, that would probably be sufficient, and then Mr.
23 Leibowitz, if you feel the need -- wait a minute. Okay.
24 This is what I want you to do. I want you to contact
25 technical staff. Did the revised site plan have anything on

1 storm water in it? Was there a storm water sheet?

2 MR. SEKERAK: No.

3 EXAMINER: No. Okay. I would request that you
4 submit a storm water sheet for the revised amended site plan
5 to technical staff, and I'll talk to Mr. Orobono and let him
6 know it's coming. Okay? And I'd just like a statement from
7 them in the record and then we can proceed, you know, if you
8 want to bring -- if he has questions and you don't have a
9 storm water person here, I'm not going to continue it again
10 over a storm water person.

11 MS. MEAD: Oh. Yeah. No. We would just ask that
12 we could have that person go first.

13 EXAMINER: That's fine.

14 MR. LEIBOWITZ: I don't care.

15 EXAMINER: Well, if you want to wait to see what
16 staff says and then, say, if you feel the need to cross-
17 examine, we can do it that way.

18 MR. LEIBOWITZ: Oh. Because staff might not have
19 had a chance to comment by January 12th.

20 EXAMINER: Staff hasn't seen the storm --

21 MR. LEIBOWITZ: Right.

22 EXAMINER: You understand what I'm saying?

23 MR. LEIBOWITZ: Yes. Yes.

24 EXAMINER: I'm asking Mr. Sekerak because its --
25 that engineer was from your firm. Right?

1 MR. SEKERAK: Yes.

2 EXAMINER: Yeah. I'm asking Mr. Sekerak.

3 MR. LEIBOWITZ: I'm sorry. I'm getting input
4 from --

5 EXAMINER: No. I know. Take your time. We'll
6 work it out. Okay. Mr. Zepp?

7 MR. ZEPP: Also, I think that one of the concerns
8 about the operator or the transportation.

9 MS. MEAD: We already discussed that earlier.

10 MR. LEIBOWITZ: We'd like to cross examine the
11 storm water person whether or not the technical staff has
12 had an opportunity to review the storm water plan.

13 EXAMINER: Okay. All right. So, Mr. Sekerak,
14 would you kindly submit a storm water management --

15 MR. SEKERAK: Concept.

16 EXAMINER: -- concept plan, thank you, to
17 technical staff, and I will ask them to give their advise on
18 it and that'll be in the record and then if you wish to
19 bring your civil engineer, Mr. Leibowitz can ask any
20 questions he wishes to ask. All right? So, have we covered
21 all the loose ends? I think so. So, I do appreciate your
22 time and your patience, and I will see you on January 12th.

23 MR. LEIBOWITZ: Is that 9 o'clock?

24 EXAMINER: 9:30.

25 MR. LEIBOWITZ: 9:30.

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EXAMINER: And we're off the record.

C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Office of Zoning and Administrative Hearings for Montgomery County in the matter of:

Petition of Gilmoure-Brunett, MR. LEIBOWITZC

Special Exception No. S-2781

OZAH No. 11-05

By:

Dawn M. Bahnmilller, Transcriber